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CIS

S. 613, A BILL TO AMEND THE HOBBS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 613

A BILL TO AMEND SECTION 1951 OF THE UNITED STATES CODE, AND FOR OTHER PURPOSES

DECEMBER 10, 1981, AND MARCH 11, 1982

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CONTENTS

Page

Hearings held on:
  Thursday, December 10, 1981 ... 1
  Thursday, March 11, 1982 ... 135

STATEMENTS OF COMMITTEE MEMBERS

Mathias, Senator Charles McC., Jr ... 1, 135
Dole, Senator Robert ... 2
Grassley, Senator Charles E ... 2, 152
Thurmond, Senator Strom ... 84

CHRONOLOGICAL LIST OF WITNESSES

Thursday, December 10, 1981

Rose, Jonathan C., Assistant Attorney General, Office of Legal Policy, Department of Justice ... 3
Gold, Laurence, special counsel, AFL-CIO, accompanied by Ray Denison, director, and Howard Marlowe, associate director, Department of Legislation, AFL-CIO ... 16
Larson, Reed, president, National Right to Work Committee, accompanied by Rex Reed, attorney ... 59
Ross, Alan G., Associated Builders & Contractors, Inc., accompanied by Richard Markey, special legal counsel ... 72
Supica, Jim W., president, Associated General Contractors of America, accompanied by Brian Deery ... 78

Thursday, March 11, 1982

Thompson, Robert T., chairman, Labor Relations Committee, U.S. Chamber of Commerce, accompanied by Arthur Rosenfeld, labor law attorney, U.S. Chamber of Commerce ... 136
Houston, John Charles, director of congressional affairs, Public Service Research Council ... 154
Legg, John S., Universal Utility Contracting Co., Woodinville, Wash., representing the National Utility Contractors Association ... 186
Previant, David, chief labor counsel, International Brotherhood of Teamsters, accompanied by Robert Baptiste, counsel, International Brotherhood of Teamsters ... 192
Rupp, John P., Covington & Burling, representing the American Civil Liberties Union, accompanied by Scott Gilbert, Covington & Burling ... 225

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Gold, Laurence:
  Testimony ... 16
  Prepared statement ... 33
  Enclosures—
    The Truth About the National Right To Work Committee Charges, appendixes A through Q ... 47
    Bombing Incidents by Motive, Including Property Damage for 1979-80, table ... 59

Page

Houston, John Charles:
  Testimony ... 154
  Prepared statement ... 179
Larson, Reed:
  Testimony ... 59
  A Reader's Digest reprint: "Arson-to-Order in the Building Trades" ... 66
  Prepared statement ... 108
Legg, John S.:
  Testimony ... 186
  Prepared statement ... 190
Markey, Richard: Testimony ... 72
Marlowe, Howard: Testimony ... 16
Mathias, Senator Charles McC., Jr.:
  Statements for the record from—
    Senator Strom Thurmond ... 84
    National Labor-Management Foundation ... 88
    Robert A. Georgine, president, Building and Construction Department, AFL-CIO concerning S. 613 to amend the Anti-Racketeering Act ... 90
    United Electrical, Radio & Machine Workers of America ... 104
    AFL-CIO: The Truth About Incidents Cited In Testimony ... 105
  Letters from—
    United Steelworkers of America to all U.S. Senators ... 85
    Senator Strom Thurmond to Lloyd McBride, international president, United Steelworkers of America ... 86
    Farm Labor Research Committee to Senator Charles McC. Mathias, Jr ... 89
  Article: "Crimes Committed in the Name of Labor," from the Harrisburg Patriot, November 25, 1981 ... 87
  United States v. *Thordarson,* opinion of the Court, U.S. Court of Appeals, Ninth Circuit ... 161
Previant, David:
  Testimony ... 192
  Prepared statement ... 201
  Great Coastal Express, Inc. v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* memorandum, U.S. District Court for the Eastern District of Virginia, Richmond Division ... 218
Rose, Jonathan C.: Testimony ... 3
Ross, Alan G.:
  Testimony ... 72
  Prepared statement ... 118
Rupp, John P.:
  Testimony ... 225
  Prepared statement ... 229
Supica, Jim W.:
  Testimony ... 78
  Prepared statement ... 127
  Summary of Testimony of S. 613 ... 132
Thompson, Robert T.:
  Testimony ... 136
  Prepared statement ... 146

APPENDIX

PROPOSED LEGISLATION

S. 613, a bill to amend section 1951 of the United States Code, and for other purposes ... 239

ADDITIONAL STATEMENTS FOR THE RECORD

Amy E. Conn, public information officer, Highlands Regional Medical Center.. 242
  Affidavit of Helen Smith ... 244
  Statement of beating ... 246
  Incidents at Highland Regional Medical Center ... 248

Page
Samuel Eisenberg, manager-secretary of Plastic, Moulders & Novelty Workers' Union, Local 132, International Ladies' Garment Workers Union, AFL–CIO 250
Exhibit A: Complaint and Notice of Hearing 258
Exhibit B: Order scheduling hearing 261
Exhibit C: Picture of James Grecco 262
Exhibit D: Charge against employer 263
Sam J. Ervin, Jr 264
Donald T. Fritz of J. T. Fritz & Sons, Lutherville, Md 267
Anita di Luzio, Greenfield, Mass 269
Mike Matthews, president, Electro-Harmonix, New York, N.Y 271
John B. Parrish, professor, Northeast Louisiana University, Monroe, La 274
Mark Pirkle and Claude Lee Prater 276
John H. Seats, executive vice president, Mary Helen Coal Co., Belfry, Ky 283
Deanna V. Ussery, Hot Springs, Ark 286
Ron and Karen Yokom 290
American Farm Bureau Federation 296
AFSCME 298
National Association of Manufacturers 303
Railway Labor Executives Association 313

LETTERS SUBMITTED FOR THE RECORD

Letters to Senator Charles McC. Mathias, chairman, Subcommittee on Criminal Law, from:
Emily Perry 315
Allotta, Singer & Farley Co., L.P.A., attorneys and counselors at law 316
Bruce Schreiber 319
Vernon Winzeler, manager, Brian-Dawn Trucking, Inc 321
Howard E. Rew 323

ADDITIONAL SUBMISSIONS FOR THE RECORD

LEGAL DOCUMENTS

Affidavits pertaining to—
Felton Construction Co. v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 252, et al* 326
Universal Utility Contractors, Inc. v. *Laborers International Union of North America, Local 374, et al* 365
Incident reports 401
Depositions of Joseph Mannino:
Letter to Van de Kamp, district attorney, Los Angeles County 427
Declarations of—
Joseph Mannino 430
Barbara Kaupang 435
Douglas Johnson 436
Vanetta Garrio 437
Bill Thornton 438
Letter of resignation to Douglas Moloney, Graphic Arts International Union, Local 262 439

ARTICLES

Newspaper articles relating to labor violence from various areas of the country 441
"Labor Violence: The Inadequate Response of the Federal Anti-Extortion Statutes," by Thomas R. Haggard, professor of law, University of South Carolina School of Law 458

S. 613, A BILL TO AMEND THE HOBBS ACT

THURSDAY, DECEMBER 10, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 2228, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Also present: Senators Dole, Grassley, Specter, and Biden.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. The subcommittee will come to order.

Today the Senate Judiciary Subcommittee on Criminal Law begins hearings on Senate bill 613,[1] introduced by Senator Thurmond, Senator Hatch, and Senator East. The basic purpose of the bill is to amend the Federal extortion statute, commonly referred to as the Hobbs Act, to expand its coverage of violence committed during a labor-management dispute.

Under the Hobbs Act, interference with interstate commerce through robbery or extortion is a Federal crime. Extortion is defined as "the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence, or fear * * *." That's the definition in the opinion of the Court in *United States* v. *Enmons.*

The Court held that the use of violence to achieve legitimate collective bargaining demands was not "wrongful" within the meaning of the Hobbs act. The effect of this decision is to exempt, for example, the use of violence to obtain higher wages from the coverage of the Hobbs Act. The Hobbs Act would still apply, however, where violence was used to obtain wages for fictitious or superfluous services.

Since the decision was handed down in 1973, there have been numerous legislative attempts to reverse it. Prior versions of the Criminal Code Reform Act contained provisions which would have at least limited its effect. Today, however, is the first time a congressional committee has held hearings solely on the questions raised by the *Enmons* decision.

If enacted, Senate bill 613 would eliminate the *Enmons* exception to the Hobbs Act. The bill would also add two new provisions to the act. First, the bill would make it a Federal crime to interfere with interstate commerce by inflicting or by threatening to inflict death or serious bodily injury. Second, it would make the willful damage of $2,500 or more of business property a Federal offense.

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[1] The text of S. 613 can be found in the appendix, p. 239.

The central question presented by this legislation and before the subcommittee today is whether or not the expansion of Federal jurisdiction that is envisioned by Senate bill 613 is justified by a sufficiently compelling Federal interest.

To help make this determination, the subcommittee will hear today from representatives of the Department of Justice, from organized labor, and from the business community. The first witness today will be the Honorable Jonathan C. Rose, Assistant Attorney General of the Office of Legal Policy. The second witness will be Mr. Larry Gold, special counsel to the AFL-CIO. Representing the business community today will be a panel of witnesses, including Reed Larson, president of the National Right to Work Committee; Alan Ross, appearing on behalf of the Associated Builders and Contractors, Inc.; and J. W. Supica, appearing on behalf of the Associated General Contractors of America.

Mr. Rose, you are our first witness.

Senator **Dole**. Mr. Chairman, I wonder if I might just introduce a witness who's going to be coming on later. We have a hall full of people waiting to get into my hearing at the Senate Finance Committee, and I want Mr. Supica to know that I'd be here otherwise, Jim.

Senator **Mathias**. The subcommittee is always illuminated by Senator Dole.

Senator **Dole**. You need it in here.

Senator **Mathias**. We always need it.

STATEMENT OF SENATOR ROBERT DOLE

Senator **Dole**. Since I'll not be able to be here—we have a hearing involving a tax matter called leasing which is about $25 billion that some people have questions about—I want this subcommittee to know that I am well acquainted with Mr. Supica; he is appearing today as president of the United Construction Co. of Overland Park, Kans. He will be testifying on behalf of the Associated General Contractors of America as chairman of that organization's Crime Prevention Committee.

I have known him for some time and can attest to his interest and expertise with reference to today's hearings. Because of his longtime involvement in the construction industry, he is aware of jobsite violence occurring during the course of labor disputes.

So I am very pleased that he is here and I will try to get back. I again thank the chairman for letting me interrupt the course of the hearing.

Senator **Mathias**. Thank you, Senator Dole.

Before you proceed, Mr. Rose, let me ask Senator Grassley if he wishes to make a statement.

STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator **Grassley**. Mr. Chairman, I am not a member of this subcommittee but I am interested in this piece of legislation as a member of the full committee. I want to sit in on part of this hearing and I commend you for holding this hearing on this very desirable piece of legislation.

I, for one, am vigorously opposed to violence and extortion regardless of its source, and regardless of the purpose it seeks to achieve. During the full Judiciary Committee consideration of the Federal Criminal Code I offered an amendment that would have the same effect as S. 613, but unfortunately, for reasons I am still unable to agree with, a majority of those present found that the provision was too controversial, and therefore would hinder passage of the recodified criminal code. The amendment was voted down 8 to 6.

I am hopeful that this hearing will enhance the Senate's understanding of the seriousness of violence on the picket line, and that we will ultimately secure final passage of this legislation.

For the purposes of clarification, I think that it is necessary to emphasize that the definition of extortion, as embodied within this bill, is not intended to cover an incident such as a simple assault, which is prone to happen on a picket line. Rather, extortion should be defined as it is commonly used in the criminal law; that is, the obtaining of property of another with his consent but induced by use of force or fear or under the color of official right. Any person who engages in such conduct should be subject to the full penalty of the law.

I think it is of great significance to note that in 1980 the Bureau of Alcohol, Tobacco and Firearms identified labor strife as the No. 1 cause of all bombing incidents in the United States. This type of violence affects not only private sector employers but has begun to spread with increasing regularity into the public sector as well. One need only review the daily newspapers to learn that public officials are subject to death threats, public buildings are bombed and burned and school buses overturned, all in an effort to effect a collective bargaining agreement.

Yet, as Congressman Hobbs has so aptly expressed it, "Crime is crime no matter who commits it and robbery is robbery and extortion is extortion, whether or not the perpetrator has a union card."

Thank you, Mr. Chairman.

Senator **Mathias**. Thank you, Senator Grassley.

STATEMENT OF HON. JONATHAN C. ROSE, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE

Mr. **Rose**. Mr. Chairman, before I start, I would like to say that I believe the subcommittee has a statement that we submitted last Friday, and I would like permission to substitute the statement that I am going to be reading today. The statement that I am making today was drafted after a meeting by the President with some leaders of organized labor last week, where they expressed some concerns about the administration's anticipated position on S. 613, and this statement is intended to address directly those concerns.

Senator **Mathias**. Your statement of today is the statement which will appear in the record.

Mr. **Rose**. Fine.

Senator **Mathias**. Let me say that it will appear in the record in full if you want to summarize it.

Mr. **Rose**. Fine; I am pleased to be here today to present the views of the Department of Justice on S. 613, a bill to amend the Federal extortion and robbery statute, commonly referred to as the Hobbs Act, which is found at section 1951 of title 18, the United States Code.

Because the bill seeks both to modify the existing statute and to increase significantly Federal enforcement responsibilities over conduct which is not currently covered by the Hobbs Act or other Federal criminal law, I shall separately discuss these proposals.

First, I shall address the Justice Department's reasons for supporting those provisions of the bill which would revise the judicial interpretation of the current statute in *United States* v. *Enmons*, and seeks to make clear that the Hobbs Act punishes the actual or threatened use of force or violence to obtain property, regardless of whether the extortionist could have obtained such property through the use of nonextortionate, legitimate means.

Second, I will set forth the reasons why the Justice Department strongly recommends against enactment of those provisions of the bill which would create new Federal violations for affecting interstate or foreign commerce by inflicting or threatening to inflict death or serious bodily injury on any person, or by willfully damaging to the extent of $2,500 or more, any property, including real property, used for business purposes.

Until the *Enmons* decision by the Supreme Court in 1973, the commonly held view was that under the Hobbs Act, any actual or threatened use of force or violence to obtain property was a wrongful use of force or violence, and therefore constituted extortion. It was considered irrelevant to the statute that the person obtaining the property claimed to be entitled to it on some legal or equitable ground. There exists many other means, lawful means, of asserting such claims of right. The law should not allow, and was believed not to allow, resort to violence as a means of settling private disputes.

The *Enmons* case involved only one of the innumerable contexts in which extortion might occasionally take place—the context of labor-management disputes. Obviously, the vast majority of such disputes do not involve the use of violence or the threatened use of violence.

In the incident that led to the *Enmons* prosecution, however, striking union members seeking a new collective bargaining agreement with a utility company fired rifles at three company transformers, drained oil from another company transformer, and blew up a transformer substation owned by the company. The indictment charged a wrongful use of force in violation of the Hobbs Act.

In the *Enmons* decision, five members of the Supreme Court held that such violence during a strike to achieve legitimate collective bargaining objectives was not intended by the Congress to be covered by the Hobbs Act. In reaching this conclusion by a slim one vote margin, the majority opinion emphasized statements appearing in the legislative history of a version of an earlier bill which was never enacted into law—statements indicating that the statute was not designed by its supporters to interfere with legitimate activities on the part of labor unions.

The majority expressed concern that a broader interpretation of the statute would apply its coverage to "the worker who threw a punch on a picket line or the striker who deflated the tires of his employer's truck. The position we take today makes clear our conclusion that minor violent incidents of this type during a labor dispute should not be subject to prosecution under Federal law.

The four dissenting justices in *Enmons,* in an opinion written by Mr. Justice Douglas, sharply criticized the majority's conclusion and interpretation of the legislative history of a predecessor bill to the Hobbs Act. The minority found that the statute would apply to the situation involved in this case, and did not agree that incidents of picket line violence would be swept into Federal criminal law if their interpretation of the Hobbs Act were adopted.

It is our understanding that the bill before this committee is designed to make it clear that the Hobbs Act, as amended, is designed specifically to reach the kinds of violence that occurred in the *Enmons* case, but is not intended to reach and would not reach the kinds of minor, incidental violence and other forceful conduct that sometimes occurs in the course of labor disputes.

It is also our understanding, moreover, that by this amendment the committee intends to insure that the use of violence for coercive purposes by those representing management, as well as by those representing labor, are covered by the statute. In short, we understand that the bill would assure that no extortive violence by either party to a labor dispute would be exempt from the coverage of the statute, but that acts such as routine picket line violence that are not designed for extortive purposes would not be covered.

It is with this understanding that we support the bill's amendment to clarify the Hobbs Act. We support it in part because such a result is logical and plainly legitimate. We also support it in part because of the concern that the rationale leading to the exception created by the *Enmons* decision could be misconstrued in the future to permit exceptions to the coverage of the statute in other areas as well.

Before discussing the other provisions of the bill, I would like to make one suggestion and one observation. First, although it should be obvious that conduct in the nature of incidental picket line violence is not in itself designed for the obtaining property from another and hence would not violate the amended statute, we urge that this exception to liability be made express in the statute itself. We understand that while this may be seen as redundant as a technical matter, it should allay the concerns of those who feel that the statute might otherwise be applied to incidents of picket line violence, and not to just clear cases of extortion. We would be happy to work with this subcommittee and representatives of organized labor in seeking to draft an exception of appropriate scope.

Incidents of violence occurring during labor disputes are today prosecuted by State and local authorities and we believe those incidents should in the future continue to be prosecuted by such authorities. The *Enmons* decision, we believe, represented an erroneous interpretation of the Hobbs Act which is fully capable of spawning other misinterpretations of the act in fields having nothing to do with labor.

We do not believe that this part of the draft bill creates a new Federal crime. That is not the administration's goal, as the President recently indicated. It simply makes clear that the Federal law against extortion would apply to the kind of coercive violence represented by the facts in the *Enmons* decision.

The purpose of our proposed amendments to the draft bill is to make absolutely clear that the Hobbs Act, properly interpreted, cannot be misused to reach minor or incidental acts of violence in a labor dispute. It should not be the purpose or effect of this bill to have a chilling effect on legitimate labor activity. The right of collective bargaining is clearly established in the American political and legal tradition. It is not and will not be the policy of the administration to interfere with the right of labor to pursue its legitimate economic goals.

The bill would also create new Federal crimes, predicated independently of extortion or robbery, where the channels of interstate or foreign commerce are affected by violence constituting actual or threatened infliction of death or serious bodily injury, or actual damage to commercial property to the extent of $2,500 or more. The Justice Department believes that these provisions would result in an extremely broad expansion of Federal criminal enforcement responsibilities, which is not justified and which could severely tax the resources of the Department.

The jurisdictional element of a Hobbs Act violation requires proof of either an actual, albeit de minimis, impact on interstate or foreign commerce, or in the absence of proof of an actual impact, a realistic probability of some potential effect on such commerce. Accordingly, under these new provisions, the mere assault on a cabdriver, who as part of his business occasionally makes interstate trips, or the destruction of his cab, would become a Federal crime. The Federal Government could be called upon to prosecute such crimes which are now more appropriately handled by local authorities.

We are aware that the enactment of these broadly worded statutes could conceivably result in positive benefits to Federal law enforcement. However, these benefits are outweighed, in our judgment, by the breadth of the new crimes.

First, the Department has neither the investigative nor prosecutorial manpower to pursue every alleged violation which could arise under the statutory language.

Second, although we do not question the authority of the Congress to create such crimes under its power to regulate commerce, there are delicate questions of federalism involved here so that Federal investigation and prosecution of every alleged violation would not be appropriate.

Because of these considerations, the Department of Justice has maintained a policy of limiting Hobbs Act robbery prosecutions, for example, to those situations in which organized criminal activity or some wide-ranging scheme is present. These same factors, lack of resources and consideration of Federal-State relations, would undoubtedly restrain the effective enforcement of these broader new crimes.

Third, enactment of these new crimes is not necessary to remedy the specific kinds of problems raised by the *Enmons* decision.

For the above reasons, the Department recommends against enactment of the new crimes in subsections (a)(1) and (a)(2) of the bill.

In summary, we believe that legislation along the lines we have suggested will have the effect of restoring Federal law against extortion as it existed prior to 1973, while at the same time maintaining an appropriate balance and division of law enforcement responsibilities between the State and Federal Governments.

That concludes my statement, Mr. Chairman.

Senator MATHIAS. Thank you very much, Mr. Rose.

The ability of State and local law enforcement authorities to deal with the type of conduct that would be encompassed under the *Enmons* language in S. 613 is of course a concern to the subcommittee. Do you have any documentation that would elaborate upon the FBI's perspective on this question? Is there any evidence that there is inability on the part of State and local authorities to deal with the question?

Mr. ROSE. Talking directly now with regard to simply the amendment that the Department would support dealing with just the kind of conduct that was involved in the *Enmons* decision?

Senator MATHIAS. Yes, let's start with that.

Mr. ROSE. OK. I have not personally seen documentation of specific areas that have not been addressed by State and local authorities. I would make this general observation, that there is within the enforcement policy under the Hobbs Act a general effort, both with respect to its robbery and extortion provisions, to deal only with those cases which are interstate in character and which would present a distinct problem for State and local authorities if they tried to investigate them.

The vast majority of extortion cases in the United States are in fact prosecuted under State and local law, and what we are seeking to do here by supporting this amendment is simply to revise an anomaly that was judicially created by the *Enmons* decision. It doesn't seem to us that there ought to be a judicially created exception for extortion which occurs in a labor dispute context. That is really the major reason for our support of the legislation. We can conceive that there could be such cases, but no specific evidence of them has made this problem urgent.

Senator MATHIAS. I am not quite sure where that leaves me. Did the Department conduct any kind of survey among State and local authorities on——

Mr. ROSE. Not that I am aware of, Senator, no. I would be glad to specifically address the question of the Bureau, though, because I am aware that they have expressed concern. But the facts on which the concern is based, I am not aware.

Senator MATHIAS. Now your testimony makes no specific reference to the recent decision by the ninth circuit in the *Thordarson* case. The court reinstated an indictment against labor representatives for alleged violations of a number of Federal statutes, including the Travel Act, and in its opinion the court rejected the lower court holding that the *Enmons* rationale immunized labor violence from prosecution under any Federal criminal statute, not merely the Hobbs Act.

I am wondering how the Department views the *Thordarson* decision and the overall effort to deal with labor-management violence. Would this in fact reduce the need for a legislative reversal of *Enmons*?

Mr. ROSE. I have not specifically read that decision, Senator, so I would like to reserve judgment on it, in order to know what it specifically covered. Obviously, we would not believe that there would be an exemption from all of the other statutes, based on the rationale of the *Enmons* decision. It simply was focused and addressed to the Hobbs Act. Obviously there are certain kinds of conduct that are covered by more than one Federal statute.

The problem here is really one of an anomaly, and the problem we face is correcting the anomaly without creating legitimate fears of an overly broad statute being applied to legitimate collective bargaining, or indeed incidental and minor violence. And that is the effort that my statement tries to do today. We do support the correction of this judicial anomaly. We do not view it as urgent, but we think it is a legitimate statutory correction that should be done. I certainly would have to read the specific decision before I could fully discuss its relation to our problem.

Senator MATHIAS. It may be helpful to you if you will read it because it may reduce the perception of an anomaly existing in the law, because it raises the question really of to what extent is labor-management violence already punishable under existing Federal laws, including the Hobbs Act in non-*Enmons* type cases.

Mr. ROSE. Well, if you can prove additional elements, obviously you can move into the RICO statute and others which could cover certain incidents that would be covered by a revised interpretation of the Hobbs Act. I doubt the coverage would be complete, but I would be glad to read the decision to see.

Senator MATHIAS. Now let me raise a doctrine with you which is frequently raised in this room and has been over many years. That is the question of States rights, a matter which we are very jealous of in the Judiciary Committee.

In your testimony you recommend against the enactment of those provisions of S. 613 which would create new Federal crimes where interstate commerce is affected—actual or threatened infliction of death or serious injury or actual damage to business property.

Now wouldn't enactment of these provisions constitute an intrusion, a nearly unprecedented intrusion of Federal Government into the criminal jurisdiction of State and local governments?

Mr. ROSE. Well, Mr. Chairman, I would have to say that if we were going to discuss the rationale behind Federal criminal jurisdiction, I think I would be here for the rest of the morning and the afternoon. I don't know that in many cases there is an entirely rational set of distinctions because the Federal criminal jurisdiction in many situations is a backup jurisdiction to State and local law enforcement. I think it is clear that the Hobbs Act covering the Federal law of extortion is such a jurisdiction.

We simply do not believe that it is wise, and I would agree with you for intrusion into local interest reasons, but more importantly because we think we have policies that try to protect the legitimate interests of States and localities in law enforcement. Indeed, the

Department is trying very hard to coordinate what are in many cases, not just as applied to this field, overlapping and concurrent jurisdictions.

Here you simply would be holding out the promise of Federal enforcement where we believe it is not realistic or appropriate, in cases which would be simple cases of violence without the additional element of extortion, which is covered under the Hobbs Act. We simply are not in the foreseeable future going to have the resources to handle this kind of vastly increased jurisdiction, and we do not think it is necessary because we do believe that the States and localities have been handling these matters effectively.

Senator MATHIAS. Now you have anticipated my next question because it is on the matter of resources. The Attorney General was before this subcommittee recently and he was outlining the anticrime program that he recommends. At that time he indicated that there would be not only no new money; in fact, there would be less money available for the effort. And in fact, cuts would have to be made in some Federal law enforcement activities.

So given these concerns about funding, I can understand what you have just said about the resources available to enforce any broad reversal of the *Enmons* decision. But even the limited reversal that the Department contemplates would require some diversion of resources from other law enforcement responsibilities, would it not?

Mr. ROSE. Well, any time you have some additional coverage, it is predictable. Indeed, I would love to share with you our travails in the budget process but I do not think this is the proper forum. The problem of course is always raised whenever you have a new statute.

We do not see this as being—the narrow, limited aspect of this bill that we have supported, we do not see as requiring a significant increase in departmental resources. On the other hand, the other two sections of the bill which we have opposed, we do think if one were going to make a realistic effort to carry out enforcement of those sections, would require a very significant increase because it would be a great expansion over the things we are currently doing.

Our proposal simply would carry out Federal enforcement in those cases of extortion that I have defined, which have an interstate or wide-ranging character or which are exceedingly serious. It would simply restore Federal jurisdiction in that area which was judicially carved out by the *Enmons* decision in a case that we just think was not properly decided. We do not see a significant resource impact from doing just that.

Senator MATHIAS. I will have some additional questions that arise from the revision of the Department's statement, but I am going to withhold those at this time and I may submit them in writing to you.

Mr. ROSE. I would be glad to answer them, Mr. Chairman.

Senator MATHIAS. Now the Chair is faced with a difficult question of seniority. Senator Grassley is the senior member of the full committee but he is not a member of the subcommittee.

Senator GRASSLEY. There is no problem with me. In fact, I have no questions.

Senator MATHIAS. I am going to recognize Senator Specter.

Senator SPECTER. There are no problems with me either, Mr. Chairman. Although I do have some questions, I would be glad to defer to Senator Grassley, especially if he has no questions.

Mr. Rose, the proposed modifications to the Hobbs Act have caused a great deal of consternation among labor unions in many quarters, and I have a grave concern about the proposed amendments if you cannot cite even one case where there has been a breakdown of local law enforcement which would pose the need for such a significant modification of the Hobbs Act.

Is there no case, not even a single one that you can point to that requires this kind of an amendment?

Mr. ROSE. I think you are trying to reverse the field on me. We do not view this as a significant modification of the Hobbs Act. We view it as the reversing of the *Enmons* decision, which really in our view erroneously interpreted a statute that had been on the books for 18 years.

Senator SPECTER. Let me modify my question. Strike everything I have had to say about significance of any sort. You have come before the Congress, the Senate, and you say we want a change in law. Why? Can you point to one case, which is worthy of our attention, to justify a change in the law?

Mr. ROSE. I have to beg some forgiveness here I guess because I am a newcomer to this subject, and I simply have not explored the FBI's view of this matter in specific instances. I can imagine situations involving extortion, as I know the excellent lawyer that you are, you could too, where the State and local resources, for one reason or another, would not be sufficient to investigate an interstate operation, for example, that occurred in the context of what might be considered a labor dispute but might involve organized crime. I can think up hypotheticals, but I do not have a specific one for you. If we have one, I will be glad to supply it to you.

Senator MATHIAS. If Senator Specter would yield, I think maybe the record should reflect that the departmental witness originally scheduled to testify was Mr. John C. Keeney, Deputy Assistant Attorney General, Criminal Division, and Mr. Rose is here as a pinch-hitter.

Mr. ROSE. That is right.

Senator SPECTER. Are you suggesting that there should be some modification in the pitches thrown to the pinch-hitter, Mr. Chairman?

Mr. ROSE. That would be all right with this witness.

Senator SPECTER. Did the previously prepared testimony of the witness who was to appear cite any specific cases, Mr. Rose?

Mr. ROSE. No, I do not believe it did.

Senator SPECTER. Well, I would say that rather than a pinch-hitter, we probably have a designated hitter of some substantial stature, given Mr. Rose's position in the Department of Justice and his level of experience.

Mr. Rose, I think this is a very fundamental question. I think that when you talk about imagining situations or hypotheticals, that that is totally beside the point——

Mr. ROSE. Well, the *Enmons* case itself was not a hypothetical situation.

Senator **Specter**. If I may finish?

Mr. **Rose**. Well, you asked me for one example and that is an example. I would like to have the record reflect that because I think that is the kind of situation that the statute should apply to and the court decided it did not.

Senator **Specter**. We do not require your testimony to tell us about the *Enmons* case. We know that from the Supreme Court decision. But to finish the question, the reference you make to imagined situations or to hypotheticals are simply not germane——

Mr. **Rose**. I understand, Senator, that you may oppose the bill, but——

Senator **Specter**. You have not let me finish my question, Mr. Rose, but you go ahead.

Mr. **Rose**. I do not want to leave the record confused that there is no situation that the Department knows of to which this statute could apply. Clearly, we believe it applied in the *Enmons* decision; the Supreme Court decided it did not. That is as clear an example as one could have.

So I do not think we should pursue that, that there is no such case to which this statute could apply. There was one and the Supreme Court decided it did not apply to that situation.

Senator **Specter**. Isn't it true that in *Enmons*, Mr. Rose, the Supreme Court noted that there had, up to that time, been no Federal prosecutions tried under the Hobbs Act for labor-management extortion?

Mr. **Rose**. I do not believe that is the fact. There was a very limited number, though, and I have asked for that information and I did not get it before I came this morning. I will be glad to supply it.

Senator **Specter**. Well, that is the statement of the Supreme Court in the decision, that there had up to that time been no Federal prosecutions tried under the Hobbs Act for labor-management extortion.

Mr. **Rose**. I asked whether that was accurate and I was informed that it was not completely accurate, but I will just have to get the results of that research.

Senator **Specter**. Mr. Rose, I have an open mind on the question of what ought to be done with this pending legislation, but I find it surprising that there would be an effort by the Justice Department some substantial time after the *Enmons* case was decided 8 years ago in 1973, that there would be an effort made to change the Hobbs Act without the citation of any case that has come to the attention of the Justice Department which requires that change.

I would ask that you supply supplemental information if you can as to any specific cases which confront the Justice Department which require this legislative change, or if you have any specifics to contradict our reading of the Supreme Court decision in *Enmons*, that at least up to the time of *Enmons* in 1973 there had been no Federal prosecutions tried under the Hobbs Act for labor-management extortion.

Mr. **Rose**. Could I address two aspects of your statement, Senator? One, I do not think this can fairly be described as an effort by the Department or the administration in the sense that we have been repeatedly asked to come up here and testify on this bill by members of this committee and subcommittee and it is not our initiative to amend the act. It is simply that we are providing our honest judgment as to what the best legislation would be, and that is what we have tried to do today. So that is one point that I would like to have clear.

The second point with regard to factual support, I will be glad to develop such information as I can. Before I came today I discussed this subject with various people in the Department who have had experience in the general extortion area—prosecutors and former prosecutors—and they said that there are cases that in their experience they have seen which could not be addressed. In their view it was simply an erroneous anomaly to have this particular exception to the Hobbs Act, but the general policy of the Department with respect to Hobbs Act enforcement is that we do view it as a backup jurisdiction to State and local jurisdiction.

So we have been using it simply as a device to undertake investigations, and I have been assured by the career prosecutors with whom I have talked, that there are such cases, where there are interstate and other characteristics, organized crime and the like, where it is very difficult for the State and local authorities even to investigate these activities, let alone undertake their prosecution. I think it is perfectly fair to ask that such specific information as we have, we supply, as long as it doesn't violate our normal rules relating to the secrecy of grand jury investigations and the like.

Senator SPECTER. I would be interested to know if you have any such situations which touch organized crime, to which you just referred, and if you have that element involved in a labor dispute which would not be reachable under the Travel Act or some other Federal legislation.

When you deal with organized crime or RICO or some of the narcotics law enforcement, I think there is no question that some of that kind of activity does involve big gangs, big rings, which do function in interstate commerce and make it difficult for local law enforcement.

But when you are talking about a kind of situation as that posed in *Enmons*, arising out of a labor incident, it is ordinarily a single incident or a series of incidents related to one matter, which although it might have some interstate implications, would be handleable by a local prosecutor.

So I would be very interested to know the specifics to have some basis to judge the thrust of need, if any such need does exist.

Mr. ROSE. Well, as I say, our point is principally based upon the theory that if you are going to have a Federal law of extortion, there should not be an exception for the kind of facts posed by *Enmons*, where you have very significant violence just because that violence has an aim and effect of achieving the goal, the legitimate collective bargaining goal, of a contract. To make out an extortion case you have to prove a taking of property as well. It is not just simply an act of violence. Thus, we oppose the expansion of jurisdiction which would be created in the first two provisions of the bill.

I would put the burden back to you. Do you believe that the kind of conduct stated in *Enmons* should not be covered by a Federal law of extortion if we are going to have such a law at all?

Senator SPECTER. I would be glad to answer your question. I do not think it should be covered because I think local law enforcement is more than adequate to handle that kind of a situation, and I say that with some experience as a prosecuting attorney.

This kind of situation does not have the vast investigative complexity that calls for the FBI, which may have to run down leads in half a dozen States. This is related to a relatively modestly expansive investigation, which even a district attorney can handle.

There is a tremendous amount of concern about this modification. I did not mean to suggest that you were a cheerleader for it or that the administration was initiating the matter or rallying the cause, but when you come to issues like throwing a punch on a picket line or deflating the tires of an employer's truck, no matter how carefully we may draft the legislation and how erudite your testimony may be and our legislative history may be or how exacting the colloquies here or on the congressional floor, there is a wide expanse of possibility as the statute is interpreted by many investigators, many prosecutors and many judges.

I for one would be very reluctant to see this kind of an extension unless there is a showing of real need, and that is why I will be very interested to see what you can produce by way of specifics.

Senator GRASSLEY. Mr. Chairman.

Senator SPECTER. Just one more question, Senator Grassley.

Mr. ROSE. Senator, I guess I would just simply repeat two points that I made. One, with regard to the law of extortion, it does not seem to me simply because the element of the labor dispute is inserted into the matter that there should be an exception if one is going to have a Federal law of extortion.

The second matter is that we believe that we can undertake—we certainly share your concern that we do not want the perception to exist that we want an expansion of Federal jurisdiction over picket line violence, minor incidents of violence that occur during a strike, in the heated emotions that sometimes occur during labor disputes.

But we do believe that with careful drafting of the legislation itself, the addition of the kind of amendment we have proposed, plus the kind of guidelines that we do have over prosecutors and investigators, that this problem of not having an expansive role of Federal jurisdiction in this area but simply an available backup jurisdiction for a class of cases specifically now judicially carved out would work without injecting us into the business of policing labor disputes, which is a business we emphatically do not want to be in.

Senator SPECTER. Mr. Rose, the other question I have arises because I am informed that the previous testimony, which had been submitted on behalf of the Department of Justice, has been modified. I would think it might be appropriate if you would tell us what differences there are between the two lines of testimony and the reasons for any such modifications.

Mr. ROSE. Certainly. The major reason for the modifications is that we wished, as an administration, to address the concerns that the leaders of organized labor raised with the President, I believe the meeting was last week. This testimony does that in a way that the previous testimony did not, we believe.

The specific modifications were as follows. First, we make the suggestion of an amendment to the current bill which we would wish to work with the committee and organized labor and any other interested parties to draft, which would make clear that the purpose of the interpretation of the Hobbs Act as it was originally passed was not to provide an expansion of Federal jurisdiction to police labor disputes. We would be willing to work on the language there.

Second, in the original testimony, the subject of penalties contained in this bill was addressed. There, because of the concerns that were expressed, we would like to have an opportunity to look at that once again. It may be that some of the penalties contained in this bill are a bit more severe than they would be for example under the new criminal code that the committee and we are working on. We just simply would like an opportunity to revisit that issue of penalties before we take a final position.

Senator **Specter**. Thank you very much, Mr. Rose. Thank you, Mr. Chairman.

Senator **Mathias**. Senator Grassley, did you have a question?

Senator **Grassley**. Mr. Chairman, taking off from a place where Senator Specter left off and then getting back to one of your original questions, I do not think there is any doubt about the ability of the local police to exercise necessary peace, but it gets back to a question of what Senator Mathias raised, and I am not sure you really answered the question: Is there a reluctance of local police? In other words, is one of the reasons that Federal legislation is needed because of a reluctance because of political pressure, and so forth, of local police to conduct the necessary investigation and prosecution of these instances of violence?

Mr. **Rose**. By and large, we simply have not found a reluctance on the part of—of course we are speaking nationally and always I suppose one can come up with specific episodes across the length and breadth of the country where that might be in some circumstance the case. As a general matter, we simply have not found it a matter, with regard to violence alone in labor disputes, that there ought to be a general Federal jurisdiction to deal with that issue. We simply have not found the reluctance, if it exists at all, to reach any such extent that the kind of expansion of jurisdiction in this bill that would be provided is necessary or justified.

Senator **Grassley**. That lack of evidence, does that come after a determined effort to find such instances, or is that just because the evidence hasn't hit you in the face? What is the particular basis for that statement?

Mr. **Rose**. I suppose there is something in between evidence hitting you in the face and going out for a determined search in a specific area, which in this case would be labor disputes, but we have not seen this as a significant problem which needs to be addressed by the sweep of the first two provisions of this bill. That is why we are not supporting them.

Senator **Grassley**. What about the 1980 report of the Bureau of Alcohol, Tobacco and Firearms that said that labor strife is the No. 1 cause of all bombing incidents within the United States?

Mr. **Rose**. I suppose I could ask whether the committee signs up for most of the things that are sometimes said in every Government report. I am not familiar with that report and I do not know that the statement you quote from leads one inexorably to the conclusion that one needs the sweep of Federal jurisdiction that this bill provides, or the conclusion that State and local law enforcements are not dealing with these bombing episodes.

Senator **Grassley**. Mr. Chairman, I will submit some more questions in writing and let this witness go at this point.

Senator **Mathias**. I had just one final question for Mr. Rose. On page 4 of your statement, today's statement, you say, "It is also our understanding, moreover, that by this amendment the committee intends to insure that the use of violence for coercive purposes by those representing management, as well as by those representing labor, are covered by the statute."

In other words, you say it is a two-way street.

Mr. **Rose**. That is right, sir. It is to be an evenhanded—simply the fact of this judicial anomaly, we are reversing it, and it would apply to both sides of a labor dispute to the extent the revision would apply at all.

Senator **Mathias**. So that when an employer uses violence to defeat his employees' legitimate collective bargaining demands, then would you say that he has obtained property from his employee and therefore committed extortion under the Hobbs Act?

Mr. **Rose**. I do not want to get into a prediction. With regard to whether management can be found to have committed Federal extortion, what we are saying in that sentence is that simply the fact that it occurs in the context of a labor dispute should be covered by a removal of the anomaly created by the *Enmons* decision. I do not want to again come up with a statement that we have specific facts where that has occurred, because I am not aware of any.

Senator **Mathias**. That is what I was going to ask you, whether you have any knowledge whether an employer has ever been prosecuted for extorting from employees under the Hobbs Act.

Mr. **Rose**. I am not aware of any such prosecutions, sir, no, but again I will check that.

Senator **Mathias**. Is it your opinion that S. 613 would bring certain acts of violence within Federal criminal jurisdiction only when those are committed by an employee?

Mr. **Rose**. No. We are in an area where, as I say, I think we are dealing with a judicially created anomaly extending to the area of labor-management disputes, and it is an anomaly created by, we believe, an erroneous reading of the legislative history of the Hobbs Act. We are not up here to justify it based upon some urgent set of circumstances of evidence based on either potential violations by labor or management.

Senator **Mathias**. Now finally, to what extent can employees or union officials be prosecuted under the Hobbs Act today, as the law now stands, despite the *Enmons* decision?

Mr. **Rose**. Our previous statement addressed that a bit more in detail, I believe, than mine did today. I believe where you can show an illegimate objective, for example even if someone calls a peaceful strike but it is for personal enrichment and not a legitimate labor bargaining objective, I believe that could be reached under current law as the Hobbs Act is interpreted, or where the violence is in fact used to achieve an illegitimate objective, such as personal enrichment or a kickback or something of that kind, that conduct could still be reached even with the *Enmons* decision.

Senator **Mathias**. Thank you very much, Mr. Rose, if Senator Grassley has no more questions. We will perhaps send you some additional questions for the record.

Mr. **Rose**. Thank you, Mr. Chairman.

Senator **Mathias**. Our next witness is Mr. Laurence Gold, special counsel for the American Federation of Labor and Congress of Industrial Organizations, not a stranger to this committee.

STATEMENT OF LAURENCE GOLD, SPECIAL COUNSEL, AFL-CIO, ACCOMPANIED BY RAY DENISON, DIRECTOR, AND HOWARD MARLOWE, ASSOCIATE DIRECTOR, DEPARTMENT OF LEGISLATION, AFL-CIO

Mr. **Gold**. Thank you. It is always a pleasure to be here, Mr. Chairman.

Senator **Mathias**. We have your full statement, Mr. Gold. Weighing it in my hand, I want to assure you that we will admit it fully to the record as if read, so that you need not feel constrained to read it all.

Mr. **Gold**. Thank you, Mr. Chairman. I wish to begin by assuring you that we will cover orally only the central aspects of our statement and that we will then do our best to respond to your inquiries.

Senator **Mathias**. I am not trying to limit you, but I want to give you the option.

Mr. **Gold**. In fairness to the subcommittee, inflicting the full statement on you once is more than sufficient, but we do want to cover the basic points and to state our position at least in brief.

For the record, my name is Laurence Gold. I am special counsel for the AFL-CIO. I am accompanied by Ray Denison, the director of the AFL-CIO's Department of Legislation, and by Howard Marlowe, the associate director of that department.

It is the AFL-CIO's position that the proposals embodied in S. 613 to expand the reach of the Hobbs Act are unnecessary and unwise and that the bill's basic provision, which is intended to rewrite the present definition of extortion to enable the Federal Government to intervene in labor disputes on the employer's side, is unfair to workers who engage in collective bargaining.

S. 613 represents a serious departure from the principle of national labor policy that the Federal Government should not side with either management or labor during legitimate labor disputes. In addition, it reverses the basic presumption accepted throughout our history that it is the State and local governments that are to keep the peace.

S. 613 would authorize a vast expansion of Federal power. In practical terms, it would require a national police force to supervise the orderly conduct of strikes. There is no basis for such a sweeping shift of power away from the States and localities and to the National Government.

There is no dispute that assault or the destruction of property during a labor dispute, or such wrongdoing at any other time, are the type of wrongs that should be promptly investigated, prosecuted, and where prosecution is successful, punished. We wish to take this occasion to emphasize that neither the AFL–CIO nor any of its affiliates condones picket line misconduct. Our unions do all in their power to prevent it, and with the rarest of exceptions, they are successful. Instances of such wrongdoing are few in number, and again, almost without exception, are effectively dealt with by the State and local authorities.

To be sure, the organizations supporting S. 613 would have Congress and the public believe otherwise. In an effort to garner support for the bill, they have mounted a public relations campaign to malign the millions of American workers who are union members and the labor movement. Their tactic is to create the illusion that there is a need for S. 613, where none in fact exists. Their object is apparent—to undermine unions and collective bargaining and to raise money for their union-busting efforts. Their tactics are equally apparent—simply ignore or distort the facts.

S. 613 raises fundamental questions on the proper role of the Federal Government in law enforcement. That being so, it is the burden of the proponents of S. 613 to show that the bill addresses a serious problem, that the States and localities have not been able to solve that problem, that the Federal Government is better able to solve that problem than State and local officials, and finally, that the added authority sought will not adversely affect the Federal Government's ability to meet its current high priority responsibilities.

As we show at some length in our statement, judged on these criteria, S. 613 should not become law. The bill seeks to amend the Hobbs Act: (1) by creating broad Federal crimes of aggravated assault, including manslaughter and property destruction, and (2) by broadening the Federal crime of extortion to include situations involving the use of physical force during a legitimate labor dispute.

With regard to the first of these proposals, we would point out that at the present time, Federal jurisdiction over crimes against the person is limited to a group of situations in which there is a plain and paramount Federal interest; for example, assaults against elected Federal officials. In contrast, S. 613 would confer Federal jurisdiction over every case of aggravated assault or property destruction associated in any way, shape, or form with productive activity.

We do not regard this aspect of S. 613 as a matter of primary interest to the labor movement. It is part of a bill which is of interest to us and we comment on it, but the scope of this aspect of the bill goes far beyond labor disputes. The basic question is whether the massive expansion of Federal jurisdiction proposed makes good sense.

To put that in perspective, I should note in Mr. Rose's example of an assault against a cabdriver if that cabdriver is engaged in an interstate trip the incident would become a matter to be investigated and prosecuted by the Federal authorities. Any such assault or any property destruction in any factory, mill, or mine in the United States would also be subject, by the wave of a pen writing S. 613 into law, to Federal jurisdiction.

The FBI Uniform Crime Report, in its latest issue September 10, 1981, showed that there is an aggravated assault in this country once every 48 seconds. Given the breadth of the affecting commerce jurisdiction, it is realistic to assume that half of these, some 60,000 incidents a year, would become Federal crimes. And we have not noted the incidents of property destruction crimes. We are willing to hazard that no single proposal has ever promised such an enormous increase in the Federal criminal jurisdiction.

No one doubts that such crimes should be investigated and prosecuted, but in our Federal system that has never been a sufficient justification for Federal jurisdiction. Historically, a clear understanding has been that the States and localities have the basic responsibility to keep the peace. That understanding rests in no small part on the long-term consensus that it is not in the public interest to expand the Federal Government by creating a national police force.

As Edwin Meese, Counselor to President Reagan and a former prosecutor and professor of criminal law noted at the recent American Bar Association meeting, and I quote, "We would hope," and I take it "we" means this administration, "to clearly define the role of the Federal Government, a role which has been somewhat diffused over the past 10 years as to its responsibilities for the crime problem. The Federal Government, to be sure, has a role, but that role is a limited one and it should be recognized as a limited one. The principal responsibility for the control of crime, particularly the kind of crime that affects most citizens—the robberies, the burglaries, the murders—are the responsibilities of State and local governments."

It is telling that the proponents of S. 613 do not even mention the practical consequences of this portion of the bill. The reason for their silence is not difficult to discern. Proposals before Congress to fund the Justice Department call for a decrease in appropriation, not a dramatic increase. And these budget cuts, which are part of the overall stringency facing the Federal Government, come at a time when Federal law enforcement authorities are severely strained in meeting uniquely Federal priority demands, such as racketeering, official corruption, drug trafficking, tax, securities and bank fraud, and insurance fraud.

Against this background, to sum up our views on this portion of the proposed amendment, it does not make good sense to require the FBI and Federal prosecutors to keep their eyes on the factories and workers of America and to pursue individuals already subject to arrest by local police under local laws dealing with assaults and with vandalism while drug pushers and narcotics importers, arson for profit businessmen and stock swindlers breathe easy.

There is one aspect of this bill that is aimed directly at labor and labor unions. That is the proposed to expand the Federal law on extortion and to overrule the decision of the U.S. Supreme Court in *United States* v. *Enmons*. In that case the court held that the Hobbs Act prohibition against extortion does not reach the use of physical force or the threatened use of such force in connection with an attempt during a labor dispute to achieve such legitimate objectives as improved wages, hours, and other terms and conditions of employment.

As the Court recognized in *Enmons*, the Hobbs Act reflects a congressional determination as to the area of proper Federal concern with respect to the crimes of extortion and robbery. That congressional determination includes a judgment as to the appropriate roles of the Federal Government and the States in policing threats of violence that occur in connection with legitimate labor disputes.

Congress, in the Court's words, has recognized a strong Federal interest in preventing unions or union members from using their protected status to exact illegitimate payments from employers; for example, payments for unwanted and superfluous services.

On the other hand, where union objectives are legitimate, such as improved wages and working conditions, unlawful force in connection with such efforts is no different from the misuse of force in other contexts. Congress has therefore concluded that such wrongdoing, ordinarily policed by the States, should not convert legitimate union bargaining demands into wrongful conduct and should not be viewed as a matter of Federal concern.

There are two legal points that we would wish to stress in terms of our opposition to this aspect of S. 613. The first is that, contrary to the arguments which have been made by its proponents, of this change would not remove an exemption from the Hobbs Act. It would create an entirely new and unsound concept of extortion. Under S. 613 extortion is stated to be "obtaining property from another induced by actual or threatened force or fear." Those statutory words are not limited by any reservation.

Applying that provision to a strike situation, union members would be subject to an extortion prosecution if the union is seeking to obtain employment benefits, and during the course of the labor dispute one or more such members uses physical force. The coincidence of union bargaining demands, no matter how legitimate, and such strike misconduct, would make out the elements of a case of extortion sufficient to permit a prosecutor to secure an indictment and to have the case sent to the jury.

Let me interject at this point that prior to the *Enmons* case, from the time the Hobbs Act was passed in the 1940's until the early 1970's, so far as our research shows, there was no effort to apply the statute to wrongdoing during legitimate strikes. Then the Justice Department decided to look into the question of whether the statute could be expanded. The Department did so despite the fact that in earlier cases in its briefs, the Department advised the Supreme Court that the statute reached only racketeering activity, namely activity for an illegitimate objective.

Three prosecutions to our knowledge were brought at that time. One involved a situation in which a picket struck a strikebreaker crossing a picket line. The second involved a situation in which an organizer put dye in dirty laundry which was being collected by a laundry company against which there was a strike. The third was the *Enmons* case, which has already been discussed.

I note those prosecutions simply to make it absolutely clear that the Justice Department, in its enforcement of the Hobbs Act, is completely unable to distinguish between minor incidents of misconduct and major incidents. These test cases spanned the gamut of the kinds of misconduct that may occur in a labor dispute and which ought to be handled for the kind of misconduct it is, rather than as the Department attempted, by reason of the fact that that conduct was taking place during a labor dispute, to label extortion.

We ought to keep in mind that the difference between an assault, which is normally punishable by a far lesser penalty than extortion, and extortion is the motive or purpose of the actor. Normally, his motive or purpose is shown by something that he individually has said or done or by showing that there has been a command by somebody else who has already made an illegitimate demand.

So far as we know, there is no situation, other than the labor dispute situation, in which a lawful demand for a lawful payment, standing alone, particularly a demand made by a representative on behalf of a group, makes any subsequent misuse of force by any one of the perhaps thousands of individuals who might benefit from the payment subject to an extortion prosecution. There simply is nothing in the general law of extortion permitting this type of imputation of an intent to extort, based on actions of one person and subsequent misconduct which could arise for any of 100 reasons—fear, animus, the heat of the moment—and to turn what would normally be an assault or property damage into extortion.

We believe that the effort to do so twists the law of extortion into a novel and grotesque shape, and that this effort leads to an expansion of the Hobbs Act which loses all touch with the reason for providing Federal jurisdiction in the first place; namely, to check racketeering activity.

There is a second matter which causes us grave concern with respect to this portion of S. 613. That is that the statute, despite the soothing words that Mr. Rose stated and that the sponsors of the legislation state, is a perversion of the national labor policy because it provides that the Federal Government will respond to two identical acts during the same labor dispute—one, the unlawful use of force by an employer opposed to union bargaining demands, the other, the same unlawful use of force by a union member who is supporting those demands—by subjecting the union member and the union member alone to stiff Federal penalties.

We think that it is entirely unfair to have a situation in which the law says that there will be a confrontation which is permitted between management and labor to settle the terms of a collective agreement, and then to apply completely disparate penalties to wrongdoing thereafter, depending on whether or not it is the employer and his agents or the union and its members that is involved.

We understand that S. 613 strains to appear evenhanded by including within its scope both acts for a legitimate labor objective and for a legitimate business objective. But the reality of labor-management relations belies the statutory language. The employer would not be subject to such prosecutions even if he or his agents engage in widespread violence. In the nature of things, the employer does not demand or receive the employee's property in or as a result of collective bargaining, and there has never been a Hobbs Act prosecution against employer violence during labor disputes, and there is just no doubt that there would not be such prosecutions under the new bill.

To be blunt and to be clear, we think that that portion of S. 613 is a sham.

To this point I have treated the legal aspects of this bill. As Senator Specter's questions indicated, it is worth asking the question, Why is Congress confronting this issue at all? Normally there has to be a showing of justification for the extraordinary step both of overruling a Supreme Court decision and of enacting a law which gives the Federal Government new power.

That being so, it should be noted that strike-related violence by employees or unions is now subject to punishment by the States and localities. In addition, misuse of the strike weapon for illegitimate ends is now a Federal crime under the Hobbs Act. And the use of explosives during strikes is now punishable by Federal law as well. Moreover, incidents of arson where State lines are crossed are also subject to Federal investigation and prosecution.

I want to underline my next point. There is not a single wrong that would be made a Federal crime by S. 613 that is not also a Federal, State, or local crime today. S. 613 will not close any enforcement gaps left open by either State, local or Federal law. There simply is no warrant in our view for expanding the law.

There are roughly 75,000 collective-bargaining agreements negotiated each year. A relatively small number, maybe a couple of thousand, result in strikes. In addition, there is probably somewhere on the order of 10,000 organizing campaigns, that go on each year. Finally, there are some 20 million union members in this country. One would expect, even though it is distressing, since we are dealing with human beings and situations where emotions run high, that there is going to be some wrongdoing. But there has been absolutely no showing that there is widespread wrongdoing by unions or union members, and there has been, and this seems to us even more to the point, no showing that by and large the State and local authorities are not fully competent to handle wrongdoing where it occurs.

You are going to hear of an episode in this instance or an episode in that instance, but let me say this: A person who came to Congress and said I can show five incidents of wrongdoing in the State of South Carolina, to use the State of the prime sponsor of this legislation, that were not corrected by local authorities and, therefore, I suggest that the Federal Government prosecute all crimes committed in the State, would, quite properly, be laughed out of this committee room.

It seems to us that the incident here and the incident there during a labor dispute which can be shown is a similarly ludicrous basis for an expansion of Federal jurisdiction.

The truth of the matter is that the major backing for S. 613 comes from the National Right to Work Committee, an employer-financed front organization which supports neither rights nor workers. In support of this bill, the Right to Work Committee has conducted a massive and inflammatory direct mail campaign characterized by subtle misrepresentations and outright falsehoods.

In our testimony we note the tactics that have been used, and in the next 2 or 3 minutes I will tick off the major headings, give an example or two and then conclude.

Senator Grassley referred to one of the prime ingredients of the rightwing's propaganda, namely, and we quote from one of their publications: "The U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms reports that labor-related violence has replaced political terrorism as the No. 1 cause of property damage by explosives in this country."

The fact is that the 1980 report of the Bureau shows that labor-related incidents, which includes acts against workers as well as any acts by strikers, account for 4.3 percent of all reported bombing incidents.

Senator MATHIAS. Mr. Gold, if I can interrupt you, since that is a disputed matter, it might be useful to include table 9 from that report as a part of your testimony.

Mr. GOLD. If we might we would appreciate the opportunity to submit that part of the report. That puts the labor-related category a distant fifth on the list. And when we discussed this question with a spokesperson for the Bureau, it was made clear that the category labor-related refers to acts which could have been perpetrated by members of labor or management or others attempting to embarrass either group.

Senator MATHIAS. It appears that it would be about 10 percent of the vandalism.

Mr. GOLD. And the Bureau's statistics are not based on indictments or convictions but solely on incidents reported.

The second charge is that ever since *Enmons,* "union bosses" haven't had to worry about Federal prosecution for crimes of violence. Let me simply say that we know of no Federal law which treats a violent incident during a labor dispute any differently from any other, aside from what we regard as the rational and sensible definition of extortion in the Hobbs Act.

You referred, Mr. Chairman, to the *Thordarson* case. In that case the ninth circuit said and the Supreme Court refused to review the matter that the Hobbs Act aside, whether you have an incident of a bombing or arson, you have a Travel Act prosecution. And it is absolutely irrelevant whether it is the employer or a union member who is the defendent or whether the incident takes place during a strike or not. Federal jurisdiction is precisely the same.

Also, I know of very few people who commit wrongs simply because they can't be prosecuted by the Federal authorities when there are State and local authorities.

The next element in this literature and in a 30-minute film which has been produced called "Scepter of Violence" is to cite incidents of labor violence. By and large, any relation to the truth in this material is entirely accidental. We have a number of appendices to our testimony and let me just give you one example.

In the film it is alleged that in Stormer, Nebr., striking workers "pinned down and terrified a nonstriking worker and repeatedly and expertly slashed the man with a razor." According to the local chief of police, the city administrator, the city prosecutor, the county prosecutor, and the regional office of the National Labor Relations Board, no such incident occurred. Local officials, however, are aware that a union steward got beat up pretty bad and that his assailant was arrested.

Next, this propaganda says that local government officials are overawed by "powerful union chiefs" and are therefore extremely reluctant to prosecute cases of strike-related violence. But the very incidents that the Right to Work Committee cites show the opposite. Where union members misconduct themselves, they are treated in the same way as anyone else.

To cite the worst examples of union misconduct that the Right to Work Committee notes, at a company called Jarl Extrusions in Elizabethtown, Tenn., a company security guard was killed. Local officials arrested and prosecuted an individual for that murder. The man, who was not a union member, was sentenced to 11 to 12 years in jail, and a union member accomplice was found guilty of two counts of manslaughter.

Probably the most publicized of these incidents, one concerning a wrong in Lake Charles, La., resulted in a union official being sentenced to 22 years in connection with the murder of a nonstriking worker. The convicted man was prosecuted by the office of the Louisiana Attorney General. That official has declared that State laws and local law enforcement agencies are fully adequate to deal with strike-related violence.

With that, having perhaps gone on longer than I should have, we would like your questions and we will do our best to answer them.

Senator MATHIAS. Now in referring to the language of the bill, you called the proposal that it would be a two-way street a sham.

Mr. GOLD. Yes.

Senator MATHIAS. How do you feel about the Department's statement that the proposed amendments could be evenhanded, could apply to extortion of management as well as labor?

Mr. GOLD. The bill is evenhanded in the words it uses.

Senator MATHIAS. I am just wondering whether you felt the Department's attitude fleshed it out any more than the bare words.

Mr. GOLD. No; it does not because the Department position is simply to look at the words and to say that if an employer during a labor dispute were to commit extortion as defined, he would be subject to prosecution. But given the fact that employers do not demand their workers' property, that happens to be a null class.

The real question here is whether, despite the fact that the law is otherwise scrupulously balanced in these confrontations between management and labor, a violent act by an employer is to be treated differently and subject to less severe penalties than an act by a union member. And we regret to have to say this: we believe that the Justice Department is simply looking at the words and not putting the words against the situations that occur.

We would be delighted if the Justice Department was right. It just so happens that in practical terms the Department is wrong.

Senator MATHIAS. The Department this morning expressed some willingness to provide for exemptions, expressed exemptions for minor acts of violence relating to labor disputes. How does that affect your attitude?

Mr. GOLD. We have on many occasions attempted to work with law enforcement officials and legislators to try to come up with a sensible approach in this area. We have done so, I might add, even though we do not think that there is, for the reasons I have already stated, a particle of a case for extending Federal jurisdiction in this area.

To this point, we have not succeeded. And I cannot tell you that I am sanguine about the likelihood of success.

The difficulties stem from two problems. The first is that the fact that a person who is involved in a strike commits a wrongful act and does so during that strike, does, under all the versions of this provision which have been suggested over the years, permit a U.S. attorney, without more, to bring an extortion prosecution. We think that that is wrong. We think that it does not make a particle of sense. Even if it is a major piece of wrongdoing, the individual involved might be motivated by considerations having nothing to do with obtaining a better collective bargaining agreement. He may be afraid. It may be that the act is the product of the heat of the moment. It may be that the act is the product of longstanding grievances that he has against the employer.

Normally, those motives if they mature into wrongdoing, would lead to a prosecution for assault or would lead to a prosecution for property damage. Under all the versions of the Hobbs Act bills, including the Justice Department version, they lead to a prosecution for extortion.

There is only one reason for wanting to bring such prosecutions that we can see, and that is on the basis of this constructive attribution of motive, to impose higher penalties on people engaged in wrongdoing during labor disputes if they are union members than would otherwise apply, and we think that that is wrong in theory.

The second problem we have is the one that you raised in your prior question. Nobody has suggested amendments to the Hobbs Act which would treat employer wrongdoing, and do so in an effective and practical sense.

We think that we are in the right in saying that until those two problems are solved it is not even worth asking the question whether there ought to be legislation in this area. And while we applaud the Justice Department suggestion that the Department is going to try to solve those problems, all we can do is wish them well and offer to work with them, but we have to be perfectly candid with you, Mr. Chairman; it does not look promising.

Senator MATHIAS. Well, you say it does not look easy. First, the Federal Government has long been a chief regulator of labor-management relations. Now there is the pervasive character of interstate commerce which flows to all parts of the country. There is the reach of the National Labor Relations Act. There is the Federal preemption of State governments over most labor-management disputes.

Given this background, it is contended in some parts that the overruling of *Enmons* and the extending of Federal criminal jurisdiction in the manner that is proposed by S. 613 would in fact be consistent with the history of Federal regulation of labor-management relations.

How would you respond to that?

Mr. GOLD. I would respond by noting the critical words you used: There are areas in which the Federal Government has preempted State and local authorities. It is our view, and certainly this was our view during the labor law reform effort—an effort which was supported neither by any of the sponsors of S. 613 nor any of the group of next witnesses that will appear—that there should be adequate Federal remedies for wrongdoing.

But the Supreme Court has made it plain, and I think Congress made it plain so that it was not much of a problem for the Supreme Court, that in the area of violence, there is no Federal preemption. Congress has chosen to have a bipartite system; certain types of activities are regulated by the Federal Government and the Federal Government alone, and other activities are regulated primarily by the States and localities.

Against that background, it seems to me that the argument that because you have done A you ought to do B does not have a lot of force. A and B simply happen to be different animals.

Nobody is suggesting, and I think the Justice Department would be absolutely horrified if anybody were to suggest that the Department ought to carry through on the NLRA model and have the exclusive jurisdiction to handle wrongdoing during labor disputes. But that at least would follow from the logic of the argument on the other side.

I do not know what our position would be on such a proposal but I do not think that we will ever be called on to express an opinion. I do not care whether the administration is Republican, Democratic or if we were to form a new Labor Party and elect a President, the Justice Department is simply not going to ask for or accept the job of being the sole law enforcement authority in labor disputes.

So then the question comes down to one we have not in this colloquy dealt with to any extent, and that is assuming that you could pass a good law, one which dealt with just the right number of situations, which solved the technical problem of defining extortion, and which was consistent with the national labor policy, ought it to be passed? That is a judgment that is much more difficult than the one you are confronted with, but given the number of strikes and organizing campaigns, the very minimal showing of union member wrongdoing during those thousands of economic confrontations, and the even more minimal and suspect showing of a failure of the States and localities to do their job, we would question the wisdom of the step.

After all, we read the Washington Post on Tuesday, which noted the latest GAO report concerning the failures of the law enforcement program embodied in the strike force concept and of the efforts to deal with organized crime. Periodically, there are reports, sensationalized or not, concerning the growth of the drug traffic and the importation of drugs into this country. There have been some rather spectacular bank frauds that have reached the papers recently; there was Equity Funding.

There are a myriad of very difficult law enforcement problems that unquestionably are the province of the Federal Government. You have to weigh that in the balance. The last time I was in this room it was to testify on the so-called regulatory reform bills. We were told that Congress and the bureaucracy has to do a better job of weighing costs and benefits. Somebody ought to be worrying about something other than some Justice Department lawyer's desire to reverse a case he lost in the Supreme Court, and the desire of employers and their friends to have a new weapon to beat unions over the head with, in evaluating this proposed legislation.

The question comes down to is the Justice Department meeting its high priority demands. The answer in the nature of things, is that it is more probable than not that they are not doing so, that the job they face is difficult and immense. Then the question becomes is this area one which contains a high-priority Federal demand, and we think as you get into it, you are going to see that what you normally have is localized sporadic incidents, most of them in a highly emotional context, some in which there is employer wrongdoing, some in which there is wrongdoing by strikers or by union members, all of which are the same kinds of breaches of peace that State and local authorities handle all the time.

In many ways a strike is not much different for State and local authorities than a rock concert or any other event where you have a number of people milling around in a situation where some of them may get excited. If the Federal Government is going to move into that area, it is not going to have a lot of time and resources left for serious national problems.

Senator MATHIAS. I have just one very brief question. This is not of course the first time that there has been a legislative initiative to affect the *Enmons* decision. In the 96th Congress there was S. 1722 which contained a provision that would have overruled *Enmons*. However, it barred prosecution of acts of violence occurring during a legitimate labor dispute, except where the actor intended to force acceptance of a union demand by inflicting death or serious bodily injury, and, in addition, where there was a certification by the Attorney General that State and local law enforcement authorities were unwilling or unable to prosecute, for reasons other than insufficiency of evidence.

This, of course, in effect left *Enmons* in force in all minor cases, or in cases where the State authorities were actively prosecuting.

If this bill were to pass, should there be a similar prohibition?

Mr. GOLD. It is very important to know how intent can be proved in these cases. In addition, the language you read proved to contain more lawyers' questions than it solved, and the interpretations of those words were numerous and conflicting.

Because of that confusion, on the House side we opposed a similar amendment. And our position is that there ought to be no legislation because an adequate case has not been made for changing the law. However, there is simply no doubt that that amendment is infinitely preferable to S. 613.

Senator BIDEN. Good. [Laughter.]

Mr. GOLD. I answered your question, too.

Senator BIDEN. You answered my question, too. I am fully satisfied. I apologize to you all for being late. I was at another committee meeting and I am only going to be here for another 20 minutes before I go to the next committee meeting. But I would like to delay you all a little bit longer and ask you a few questions if I may.

Mr. GOLD. Absolutely.

Senator BIDEN. The Justice Department testified this morning and they gave a limited endorsement to this bill. I have a very serious concern about the philosophy embodied in this bill and I wonder whether or not you could comment on that.

This administration is drastically cutting the enforcement capability of the law enforcement agencies of this country. In the last administration the FBI said they were so busy, that they did not want to handle bank robberies any more.

This administration says that they are going to cut the number of FBI agents; they are going to cut the number of customs agents; they are going to cut the number of people involved in law enforcement. They are talking about specific drastic cuts, not paperwork. They are talking about prosecutors, FBI agents.

I am wondering, who in the heck is going to investigate these cases? Have you all done any calculations on any of that?

Mr. GOLD. In light of the fact that we did not burden you with an oral recitation of our statement, you might permit me to do so now in part. On page 4 of our statement we note that President Reagan has requested that FBI funding be reduced by $41 million below his March request, that the Government's major drug-fighting agency be cut by 13 percent, and that the Bureau of Alcohol, Tobacco and Firearms be disbanded.

We also noted that Senator Biden recently observed that the 94 U.S. attorneys' offices are so overburdened that nearly 60 percent of all cases filed are dropped because the prosecutors just don't have the time.

In those terms, we were suggesting in response to an earlier inquiry from the chairman that the one question that hasn't been seriously investigated in this area is whether an expansion of Federal jurisdiction in this regard is warranted, given the other demands on the Federal Government to do that which the Federal Government and the Federal Government alone is equipped to do—namely, to deal with organized crime, drug trafficking, bank-related offenses, simply to name the most obvious ones.

Also, the Justice Department has moved rather strongly against local corruption and certain other very complicated and complex types of wrongdoing.

When you put that roster of priorities against the cuts in budget which you have just noted, it does not seem rational, given how flimsy the case is on the other side concerning the inability of State and local governments to handle these essentially local, heat of the moment matters, to pass S. 613.

Senator BIDEN. But can't you think of some examples where in fact the other side is right? Can't you think of examples where the cases aren't particularly flimsy, but there is in fact a serious violation going on and, if not demonstrated, at least an apparent reluctance on the part of local officials to move?

Mr. GOLD. I have no doubt that in this country there are some instances in which there is serious wrongdoing during strikes and the local authorities for one reason or another do not do the best possible job. That does not mean that there ought to be a redefinition of the Federal law of extortion.

There happens to be, among other Federal statutes on the books, a prohibition against the use of explosives. That applies across the board, without regard to whether or not there is a labor dispute going on. There are Federal provisions on arson. Those apply across the board without regard to whether or not there is a labor dispute.

Senator BIDEN. How does that practically function? There is, as there has been in my neighboring State of Pennsylvania, violence involving a contractor where part of a building was blown up, where the trailers were blown away, and where explosives were involved.

Let's assume that the local authorities were reluctant to or incapable of or did not have a desire to move on that. What should happen then?

Mr. **Gold**. If my understanding of the law is correct, and if there isn't a typo in our testimony, 18 U.S.C. section 844 makes the unlawful use of explosives a Federal crime. And the FBI and the local U.S. attorney could move on any such situation, just as they would if you amended the Hobbs Act.

I also started to say that if there are interstate aspects, there is the Travel Act, and if there are organized crime aspects, which we think is unlikely in legitimate labor disputes—organized crime is not intent on getting union members who are actually working better wages—there is RICO.

And in all of those situations——

Senator **Biden**. And you have no objection to those being implemented?

Mr. **Gold**. No. Nor do we have any objection, nor have we ever had any objection, to the use of the Hobbs Act to assure that a labor dispute is a legitimate labor dispute. It does not do us a particle of good, and it is one of the factors that undermines what labor unions are all about, to have the strike weapon used or violence during a labor dispute used to secure a payoff or to enrich some gangster.

We think that that aspect of the Hobbs Act is important and valuable. We wish the Justice Department would pay more attention to the realities of the situation, what law enforcement really requires, rather than, as I said before, playing with the notion that because the Department lost a case in the Supreme Court it must be reversed, even though it does not make a particle of difference to good law enforcement.

Senator **Biden**. How about the reverse situation, where there is a labor dispute and where management violence is initiated? That is not unheard of in this country—as a matter of fact, that is where most violence started, in my opinion. It is not any longer conflict over wages and issues within the contract but it is just retribution against an individual, an individual organizer, who either successfully or unsuccessfully organized.

Should the Hobbs Act encompass that? Should the Federal authorities be in there when John Q. Smith, owner of Smith Publishing, hires somebody to blow away Charlie Jones, an organizer?

Mr. **Gold**. Where there can be a uniform Federal law that deals with a certain type of wrongdoing, and applying it to labor disputes can be done evenhandedly, that ought to be the result.

Senator **Biden**. How about just plain old-fashioned ax handle stuff, just flatout old intimidation, where you just beat up an organizer?

Mr. **Gold**. By and large, we find that in the current situation, the local and State law enforcement agencies fairly go after that kind of wrongdoing on both sides.

Senator **Biden**. But you are not suggesting that jurisdiction should be extended so that the Federal Government would get involved in that matter, are you?

Mr. **Gold**. No. I do not see how the Federal Government can get into policing assaults or vandalism without taking on an overall load, if it is going to be done in a principled way, which is beyond its capacity. And therefore, we have not come to Congress and asked that the law be extended in that fashion.

I should note that the proposal to reverse the *Enmons* case, and we have underlined this point in a discussion we had with the chairman earlier, would not touch a situation in which an employer singlemindedly sets out to break an organizing campaign by using violence.

We have noted such situations in our testimony. There would be nothing done to correct that kind of wrongdoing by overruling the *Enmons* case. And one of our strongest objections to the bill is that its result would be enhanced penalty only for strikers and union members, and no enhanced penalties for employers and their agents. And we think in a labor dispute context, that is unfair.

The harder question and really it pertains to the first matter you put to us, is whether there ought to be a broader Federal presence across the board dealing with aggravated assaults and property damage. I can see arguments that in the ideal, the answer to that might be yes, but——

Senator **Biden**. This matter of violence related to labor disputes I believe is one that the American public and we who hold public office and all of you who represent labor and business would be foolish to suggest does not exist. I mean you turn on your television set and you see it. You see it in teacher strikes. You see it in a lot of other places.

One of the things that disturbs me the most, though, is that it is always characterized as a one-sided affair. It is always the labor goon that is taking on the innocent businessman.

A case in point occurred not too long ago in a truckers strike. The organized truckers, the Teamsters in my State, had gotten their situation taken care of, as they viewed it. The independent truckers thought they were really at a serious disadvantage. So the independent truckers were in the situation where the independent truckers were being accused of shooting at the labor organized truckers who were continuing to roll up and down the Delaware highways.

They came to me and said, "get the Federal Government in here." The union guys were saying, "get the Federal Government in here. We need help." They alleged that the independent truckers were doing what they allegedly were doing because they really had the support of management, because management did not like the idea of having to sign the union contract in the first place.

So it is a two-edged sword. I had to stand there and say, which I found a bit unusual, that there is nothing the Federal Government could do. If someone has taken a potshot at you from behind the billboard while you were riding down the street, that is a local problem. And as the trucker would point out to me, it may be local to you, Senator Biden, but it is my safety to me. It doesn't make any difference whether it is local or Federal or whatever.

Mr. GOLD. I think that since overall, and I hope this does not tar you in any way, our attitudes toward the use of Federal power are similar to yours, we cannot argue and we will not argue that in principle there can never be a Federal role in crime prevention. But we do think that you—the Congress—have to make some sensible judgments. You have to be able in some way to figure out which are the situations as to which there ought to be Federal intervention and which are the situations as to which there ought not to be such intervention. And it is a very difficult matter when you start getting into the areas of assaults and property destruction and malicious mischief.

In our statement we point out that the FBI statistics show that there is an aggravated assault every 48 seconds. Now which ones of those should be Federal Government matters and which ones should be State and local matters?

Senator BIDEN. Last year when we had this dispute, we reached a compromise that I understand no one supports any longer. It essentially said that if a standard can be met that there is serious bodily injury and in fact the State or local authorities were not proceeding to deal with the matter, then the Federal Government could step in.

I understand you no longer support that. Is that correct?

Mr. GOLD. That is correct.

Senator BIDEN. Then I will not ask you to repeat it because I can get that in the record.

Let me ask you in summary, then, if you could describe briefly what most bothers you about this bill? I think it's important to clarify your position. The public can reasonably ask: Why should anybody be opposed to using any tool available to Federal, State, or local government to stop violence? How can anybody be opposed to that?

At rockbottom, what is the reason that you feel so strongly about the legislation that would in effect overturn the *Enmons* case?

Mr. GOLD. The two factors uppermost in our mind are these. First of all, every effort to overrule *Enmons* takes two situations which we think cannot be distinguished, and distinguishes them in a way which is harmful to union members.

The proponents of reversal say if the employer acts wrongly and uses physical force and violence against union members on strike, he is treated as having committed an assault or having committed the crime of property destruction and he is subject to the rather minimal penalties that normally go with that kind of wrongdoing. If the union member does the same act, simply because he is on strike, a U.S. attorney can prosecute him under a crime which carries 20 years and a $10,000 fine. And we do not think that the fact that you are on strike ought to give any U.S. attorney who wants to wander in the opportunity to treat our members that way.

Second, we believe that these efforts take a fundamentally wrongheaded approach as to what the definition of extortion ought to be. We know of no other situation in which somebody who in fact is motivated by animus or by fear or acts in the heat of the moment is subject to an extortion prosecution because in the background is the fact that he is a member of a group and that group is on strike.

So we think that what is happening here is that there is an effort to expand the Federal law for only one reason—to give employers an edge. This is not an effort to improve law enforcement. This is an effort to get the Federal Government over on the employer's side, and we just resent the hell out of it.

Senator **Biden**. If an employer while there is a strike going on uses physical force against an employee, under the way the bill is written, would that employer be subject to the charge of extortion?

Mr. **Gold**. No. I do not believe there is a U.S. attorney in the world who would prosecute, because you need two elements.

Senator **Biden**. What is the second?

Mr. **Gold**. A demand of property from the person against whom the assault is made.

Senator **Biden**. Maybe then if we all insist on going forward, we should redefine what demand is. If in fact the refusal to withhold an increase in a wage is not a demand, maybe we should redefine demand so that it is. Maybe we should suggest that if a request for an increase in wages constitutes a demand, then a refusal to bargain for an increase in wages also is a demand. It is a demand that you not have an increase in wage. Maybe I will amend the bill in that way.

Really what we are talking about here are wages that people are fighting over. So if I am the employer and I do not go forward and agree with your increase, because you are demanding it, that puts me in a different category from the employee.

So maybe if we get down to the wire on this, we should redefine what constitutes a demand to make sure that both employers and employees are included in it.

I still cannot figure out, Mr. Chairman, how in God's name the Justice Department, which hasn't even figured out how to break up organized crime and has not even made one major effort to break up one single solitary organized crime family in the entire history of this country is now going to find the time and the effort to investigate and prosecute labor activities. A Justice Department that does not know how to do anything more than stop, at a maximum, 3 percent of all the drugs that come flowing into this country, a $64 billion a year industry, is going to do anything. A Justice Department that says it cannot handle bank robberies anymore is going to do anything. A Justice Department that on the facts and their own figures rejects 56 percent of all the prosecutions brought to them by the FBI because they do not have U.S. attorneys to prosecute them. A Justice Department that cut the number of U.S. attorneys and on and on and on——

Senator **Mathias**. If the Senator from Delaware will suspend, I can tell him that I asked the same question of the Justice Department.

Senator **Biden**. I hope they had good answers. I hope the Justice Department will be willing to accept all the additional money that I want to give them.

Senator **Mathias**. Then I will help you put it in a wheelbarrow and roll it over there.

Mr. Gold, our problem right now is not money but time, and we want to get the business panel on as quickly as possible.

Mr. **Gold**. I simply wanted to thank Senator Biden for stating a point I tried to state all morning much better than I have done it, and with that, to ask if you wouldn't rule that we have treaded too long on your time.

Mr. **Marlowe**. Mr. Chairman, if we could just take 15 more seconds——

Senator **Mathias**. Ten.

Mr. **Marlowe**. In our statement appendices, we have responded to incidents cited by one of the next witnesses. In the advance copy of the testimony that was filed with this committee several more incidents are cited. If that witness presents those incidents, we are prepared to provide the committee today with the truth about those incidents, responding to their allegations with facts.

Senator **Mathias**. Thank you.

[The prepared statement of Laurence Gold follows:]

PREPARED STATEMENT OF LAURENCE GOLD

My name is Laurence Gold. I am Special Counsel for the American Federation of Labor and Congress of Industrial Organizations. It is the position of the AFL-CIO that the proposals embodied in S. 613 to expand the reach of the Hobbs Act (18 U.S.C. §1951) are unnecessary and unwise and that the bill's basic provision, which is intended to rewrite the present definition of "extortion" to enable the federal government to intervene in labor disputes on the employer's side, is unfair to workers who engage in collective bargaining.

S. 613 represents a serious departure from the principle of national labor policy that the federal government should not side with either management or labor during legitimate labor disputes. In addition, it reverses the basic presumption, accepted throughout our history, that it is the state and local governments that are to keep the peace. S. 613 would authorize a vast expansion of federal power. In practical terms, it would require a national police force to supervise the orderly conduct of strikes. There is no basis for such a sweeping shift of power away from the states and localities and to the national government.

There is no dispute that an assault, or the destruction of property during a labor dispute — or at any other time — is a wrong that should be promptly investigated, prosecuted and, where the prosecution is successful, punished. We wish to take this occasion to emphasize that neither the AFL-CIO nor any of its affiliates condones picket line misconduct. Our unions do all in their power to prevent it. And, with the rarest of exceptions, they are successful. Instances of such wrongdoing are remarkably few in number; and, again almost without exceptions, are effectively dealt with by the state and local authorities.

To be sure, the organizations supporting S. 613 would have Congress and the public believe otherwise. In an effort to garner support for the bill, they have mounted a public relations campaign to malign the millions of American workers who are union members and the labor movement. Their tactic is to create the illusion that there is a need for S. 613 where none exists in fact. Their object is apparent: to undermine unions and collective bargaining and to raise money for their unionbusting efforts. Their tactics are equally apparent: simply ignore or distort the facts.

S. 613 raises fundamental questions on the proper role of the federal government in law enforcement. That being so, it is the burden of the proponents of S. 613 to show that the bill addresses a serious problem; that the states and localities have not been able to solve that problem; that the federal government is better able to solve that problem than state and local officials; and, finally, that the added authority sought will not adversely affect the federal government's ability to meet its current high priority responsibilities.

Judged on these criteria, S. 613 should not become law. The problem of misconduct during legitimate labor disputes it addresses is at most a secondary one. The states and localities are meeting their peacekeeping responsibilities. The federal government is not better situated to deal with that problem than local law enforcement authorities. And at a time when serious crimes are increasing and the federal budget decreasing, it is difficult, if not impossible, to understand how S. 613 can fail to undermine present high priority federal law enforcement responsibilities.

Federal Jurisdiction Over Assaults and Property Damage

S. 613 seeks to amend the Hobbs Act (1) by creating broad federal crimes of aggravated assault (including manslaughter) and property destruction, and (2) by broadening the federal crime of extortion to include situations involving the use of physical force during a legitimate labor dispute.

At the present time, federal jurisdiction over crimes against the person is limited to a group of situations in which there is a plain and paramount federal interest that is distinct from any state interest. (See 18 U.S.C. §114 (special jurisdiction of the United States); 18 U.S.C. §§351, 1751 (elected federal officers); 18 U.S.C. §111 (federal officials on official duty); 18 U.S.C. §112 (foreign officials); 18 U.S.C. §1716 (transmitting dangerous weapons through the mails); 18 U.S.C. §1153 (Indians on a reservation).)

In contrast, S. 613 would confer federal jurisdiction over every case of aggravated assault or property destruction which is associated in any way, shape or form with productive activity. The bill would accomplish that result by expanding the Hobbs Act to cover such wrongs "in any way or degree ... affect[ing] commerce." This phrase has been interpreted to "manifest a purpose to use all the constitutional power Congress has" to reach the conduct in question. (Stirone v. United States, 361 U.S. 212, 215 (1960).) In this regard, it has also been held that "[o]nly a de minimis effect [on interstate commerce] is necessary ... and the effect need be only probable or potential, not actual." (United States v. Phillips, 577 F.2d 495, 501 (9th Cir. 1978), cert. denied, 439 U.S. 831.) Moreover, S. 613 proposes that any "threat" of, or attempt at, or conspiracy directed toward such wrongdoing would be a federal felony.

It is difficult to conceive of any incident involving aggravated assualt or property damage at any workplace or involving any person at work that would not be within the federal jurisdiction under this proposal. Hot words that lead to a melee on a shop floor provoked by an argument between fans of rival football teams would be subjet to investigation by the FBI and prosecution, if warranted, by a United States Attorney. The FBI Uniform Crime Reports (September 10, 1981) show that there is an aggravated assault once every 48 seconds. Given the breadth of the affecting commerce jurisdiction, it is realistic to assume that half of these -- some 60,000 incidents a year — would become federal crimes. We are willing to hazard that no single proposal has ever promised such an enormous increase in the federal criminal jurisdiction.

No one doubts that the crimes just enumerated should be investigated and prosecuted. But, in our federal system, that has never been a sufficient jusitification for federal jurisdiction. Historically, the clear understanding has been that the states and localities have the basic responsibility to keep the peace. That understanding rests in no small part on the long-term consensus that it is not in the public interest to expand the federal government by creating a national police force. As the Final Report of the Attorney General's Task Force on Violent Crime stated:

> We do not believe that the federal government should direct or subsidize the ongoing operations of state and local criminal justice systems or should supersede those systems with a national police or court or correctional system. But we do believe that by providing useful services, national perspectives,

> and financial assistance for specific important purposes, the federal government can do much to improve the coordinated federal-state-local fight against serious crime. [Attorney General's Task Force on Violent Crime, Final Report (August 17, 1981), ch. 3 "Federalism in Criminal Justice," p. 60.]

And as Edwin Meese, Counselor to President Reagan and a former prosecutor and professor of criminal law, added in remarks at the recent American Bar Association meeting in New Orleans, Louisiana (August 11, 1981):

> "* * * [W]e would hope to clearly define the role of the federal government, a role which has been somewhat diffused over the past ten years, as to its responsibility for the crime problem. The federal government to be sure has a role, but that role is a limited one and it should be recognized as a limited one. The principal responsibility for the control of crime, particularly the kind of crime that affects most citizens — the robberies, the burglaries, the murders — are the responsibility of state and local governments."

But the creation of the general federal crimes of aggravated assault and property damage would provide a sweeping and unprecedented predicate for the intervention of federal law enforcement authorities in matters well within the historic domain of the states. Serious efforts to enforce such federal criminal sanctions would necessitate the creation of a federal police force which would, as a practical matter, supplant the state and local authorities as the primary agency to maintain day-to-day tranquility. We are aware of no justification for such an extraordinary disruption of the federal system through the expansion of federal power!

It is telling that the proponents of S. 613 do not even mention the practical consequences of their amendment. The reason for their silence is not difficult to discern. Proposals before Congress to fund the Justice Department call for a decrease in appropriations, not a dramatic increase. President Reagan has requested that FBI funding be reduced by $41 million below his March request, that the government's major drug fighting agency be cut by 13 percent, and that the Bureau of Alcohol, Tobacco and Firearms be disbanded. He has also requested that funding for juvenile justice programs, the Coast Guard, the Customs Service, and the Bureau of Prisons be substantially reduced. These budget cuts come at a time when the federal law enforcement authorities are severely strained in meeting uniquely federal priority demands such as racketeering, official corruptions, drug trafficking, tax, securities and bank fraud, and insurance fraud, including arson for profit. Senator Biden recently observed that the 94 U.S. Attorneys' offices are so overburdened that nearly 60 percent of all cases filed are dropped because the prosecutors "just don't have the time" (Washington Post, October 24, 1981, p. A-5).

Against that background, it does not make sense to require the FBI and federal prosecutors to keep their eyes on the factories and workers of America and to pursue individuals already subject to arrest by local police under local laws dealing with assaults and vandalism, while drug pushers and narcotics importers, arson-for-profit businessmen and stock swindlers breathe easy.

The Enmons Decision

The portions of S. 613 that would create general federal crimes of aggravated assault and property damage apply across the board. In contrast, the point of the "extortion" provision of S. 613 is to overrule the United States Supreme Court's decision in United States v. Enmons, 410 U.S. 396 (1973). In Enmons, the Court held that the Hobbs Act's prohibition against extortion does not reach the use of physical force or the threatened use of such force in connection with an attempt, during a labor dispute, to achieve such legitimate objectives as improved wages, hours and other terms and conditions of employment. The paramount and perhaps the sole purpose of that aspect of the bill is to increase federal authority to prosecute workers who are engaged in strikes for better wages and working conditions.

As the Court recognized in Enmons, the Hobbs Act reflects a Congressional determination as to the area of proper federal concern with respect to the crimes of extortion and robbery. That Congressional determination includes a judgment as to the appropriate roles of the federal government and the states in policing threats or violence that occur in connection with legitimate labor disputes.

Congress, in the Court's words, has recognized a strong federal interest in preventing unions or union members from using "their protected status to exact" illegitimate "payments from employers", for example, "for unwanted and superfluous services." (410 U.S. at 403.) On the other hand, where union objectives are legitimate, e.g., improved wages and working conditions for labor actually performed, unlawful force in connection with efforts to achieve those objectives is no different from the misuse of force in any other context. Congress has therefore concluded that such wrongdoing, ordinarily policed by the states, should not convert legitimate union bargaining demands into wrongful conduct and should not be viewed as a matter of federal concern.

The Enmons decision is faithful to the views of the Congress that enacted the Hobbs Act. The Court there stated that to extend the federal power of criminal prosecution as S. 613 proposes to do would be an interference with "legitimate activity on the part of labor people or labor unions." (Id. at 404.) The Court recognized that:

> The Government's broad concept of extortion — the wrongful use of force to obtain even the legitimate union demands of higher wages — is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine. [Id. at 410, footnote omitted.]

Equally to the point, the Congress that wrote the Hobbs Act struck the proper balance between federal and state authority. Under S. 613, extortion is stated to be "obtaining property from another *** induced by actual or threatened force or fear." Those statutory words are not limited by any reservations; indeed, the statutory language disclaims an intent "to exclude Federal jurisdiction over [an] offense[] *** if it involves force, violence, or fear therefore [and] takes place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective." Applying that provision to strike situations, union members would be subject to an extortion prosecution if the union is seeking to obtain employment benefits and during the course of the labor dispute one or more such members uses physical force. The coincidence of union bargaining demands, no matter how legitimate, and such strike misconduct, would make out the elements of a case of extortion sufficient to permit a prosecutor to secure an indictment and to have the case sent to the jury. (See United States v. Caldes, 457 F.2d 74, 78-79 (9th Cir. 1972).)

The statute is all encompassing in its drive to change wrongs that are now normally treated as state and local misdemeanors into a federal felony carrying a minimum $100,000 fine and 10 years imprisonment. So far as appears, S. 613 reaches minor misconduct, picket line affrays in the heat of the moment and any other misuse of force motivated by fear or animus by union members during a strike.

This twists the law of extortion into a novel and grotesque shape. We are unaware of any other situation in which a lawful demand for a lawful payment, standing alone, makes any subsequent misuse of force by any one of the perhaps thousands of individuals who might benefit from the payment subject to an extortion prosecution. And there can be no dispute that such an expansion of the Hobbs Act loses all touch with the reason for providing federal jurisdiction over extortion in the first place — to check racketeering activity.

Such an extension of federal power is particularly inappropriate because it is a pervasion of the national labor policy for the federal government to respond to two identical acts during the same labor dispute — one the unlawful use of force by an employer opposed to union bargaining demands, the other the same unlawful use of force by a union member who is supporting those demands — by subjecting the union member and the union member alone to stiff federal penalties. This is not only incompatible with the historic division of authority between the states and the federal government, it also improperly places the federal prosecutorial power on one side — the employer's side — of numerous labor disputes. While S. 613 strains to appear evenhanded by including within its scope both legitimate "labor objective[s]" and "business objective[s]", the reality of labor-management relations belies the statutory language. The employer would not be subject to such prosecution, even if he or his agents engage in widespread violence; in the nature of things, the employer does not demand or receive the employee's property in or as a result of collective bargaining.

Federal Intervention is Unnecessary

One of the premises of our federal system of law enforcement is that duplication of federal and state laws should be avoided (cf., Petite v. United States, 361 U.S. 529 (1960)).

In light of that sound goal, it should be noted that strike related violence by employees or unions is now subject to punishment by the states and localities. In addition, misuse of the strike weapon for illegitimate ends is now a federal crime under the Hobbs Act. And the use of explosives during strikes is now punishable by federal law as well. (See 18 U.S.C. §844.) Incidents of arson where state lines are crossed are also subject to federal investigation and prosecution. (See 18 U.S.C. §1952.) Indeed, not a single wrong that would be made a federal crime by S. 613 is not also a federal, state or local crime today. S. 613 will not close any enforcement gaps left open by either state, local or federal laws.

There is no warrant for further expansion of the federal role. The Justice Department's Task Force on Violent Crime has concluded that, in general, the federal government should provide indirect assistance to the states by using federal laws already on the books (such as the Fugitive Felon Act) and technical assistance (such as laboratory analysis and fingerprint identification). The Task Force recommended that federal laws be expanded only in extraordinary situations that cannot be handled at the state level.

Clearly, there are areas of criminal activity in which the unique resources and expertise of trained federal officers are desperately needed. But that is not true of conduct such as breaches of the peace on a picket line. These are incidents that can be more effectively handled by the states.

The American Collective Bargaining System Works Well

It is universally recognized that the American system of labor-management relations works well. The collective bargaining process is the heart of that system and the envy of working people throughout the world.

Collective bargaining has developed over the years as the method for introducing a measure of democracy into employer-employee relationships. Without collective bargaining, the individual worker has no voice.

With collective bargaining, he or she shares with other employees an opportunity to establish orderly procedures for job security, health and welfare programs, pension benefits, wages and working conditions.

As practiced in this country, collective bargaining recognizes the right of employers to disagree with workers, and the right of workers to disagree with management. Such disagreements are rare. In fact, year in and year out 98 percent of all collective bargaining contracts are settled without any strike. To put this remarkable accomplishment in perspective, it is well to note that approximately

75,000 collective bargaining agreements are negotiated each year. Yet the supporters of S. 613 base their argument on a mere handful of incidents — and often misstate what happened in those instances.

All too little is heard of this remarkable accomplishment. Instead, the focus is on the two percent of the situations where there is a lockout of employees or a strike, particularly where the dispute is marked by picketing.

Picketing is a form of free speech, protected by the First Amendment. Throughout the history of this country, picketing has been used to voice opinions on a variety of issues. Generally the people who carry a picket sign do so because they have a strong commitment to their cause. When union members walk a picket line, they are risking their paychecks — and sometimes their jobs. They may be protesting unlawful or unreasonable action by the employer. It is no wonder that in situations such as these, emotions may run high. Nonetheless strikes are usually short, the picketing is peaceful and an agreement between workers and management is reached. For in most negotiations, both sides recognize that in resolving labor disputes, clear thinking and compromise are required — not the use of force.

On rare occasions, such disputes do erupt into violence. But, given the one-sided application of S. 613, it is well to remember that when such incidents occur, the wrongdoing may be precipitated by either side — by a worker seeking better wages or working conditions, or by an employer or supervisor angry at strikers.

In light of the equally one-sided propaganda in support of S. 613, it is also well to remember that the men and women of the American labor movement are law-abiding citizens. Even when they have laid their paychecks and their jobs on the line during a strike; even when they watch employers hire strikebreakers and private police forces to threaten their jobs and their economic well-being, union men and women conduct themselves responsibly. Instances of strike-related violence are so rare that the FBI's annual crime report does not list such wrongs as a separate statistical category.

There is no factual case for enactment of S. 613 and there is no data to support the contention endlessly repeated by the bill's supporters that "union violence" is a pervasive national problem. In fact, available statistics reveal exactly the opposite.

Where federal jurisdiction already exists, by virtue of the provisions that make bombing and arson federal crimes, the federal agencies report that the total number of "labor-related" bombings and arson incidents are extremely low and, further, that there has been a marked decrease in such activity. As reported by the Bureau of Alcohol, Tobacco and Firearms, there were 38 "labor-related" bombing incidents throughout the United States in 1979 out of the total of 1,247 reported. In 1980, the total number of "labor-related" bombing incidents throughout the nation dropped 50 percent to 18, despite the general increase in the total number of bombing incidents related to other motives. Similarly, the total number of "labor-related" arson incidents also declined by 50 percent from the previous year to a total of 10 incidents in 1980, while arson incidents stemming from other causes increased. And, of course, these totals include wrongdoing by employers and by third persons —they are not statistics on union wrongdoing.

The National Right to Work Committee Propaganda

The major backing for S. 613 comes from the National Right to Work Committee, an employer-financed front organization which supports neither rights nor workers. This extremist interest group makes no secret of its zeal for this bill. Consistent with its whole approach, this employer-front supports S. 613 in the belief that the legislation will chill the exercise of the right to form and join unions, will intimidate workers and will embolden anti-union employers in their efforts to crush organizing efforts and strikes. In support of this bill, the Right To Work Committee has conducted a massive and inflamatory direct mail campaign characterized by subtle misrepresentation and outright falsehoods.

Using S. 613 as a vehicle, the "right-to-work" front is churning the direct mail factories of the radical right to raise funds for its anti-worker warchest. The ultimate goal of this massive fund raising is not to protect the rights of American workers, but rather to undermine collective bargaining.

The National Right to Work Committee and its allies have published materials in support of S. 613 filled with falsehoods and misrepresentations. The very fact that they have had to resort to these shoddy tactics demonstrates the weakness of their position.

(1) The right wing propaganda states that, "The U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms reports that labor-related violence

has replaced political terrorism as the number one cause of property damage by explosives in this country." That is not true.

The 1980 report of the Bureau of Alcohol, Tobacco and Firearms, shows that "labor-related" incidents - which include acts against workers - account for only 4.3 percent of all reported bombing incidents. In contrast, that puts the "labor-related" category a distant fifth on the list. A spokesperson for the Bureau has made it clear that the category of "labor-related" incidents refers to acts which "could have been perpetrated by members of labor or management or others attempting to embarrass either group." Furthermore, the Bureau's statistics are not based on indictments or convictions, but solely on incidents reported. (See Appendix A.)

(2) The right wing propaganda states that "top officials in the U.S. Justice Department have said publicly that organized crime in labor is probably the most serious problem in the criminal field." That is not true.

No senior official of Justice has ever made such a claim. In fact, the former head of the Department's Criminal Division has stated that this assertion was never made or authorized by him, and at least two former Attorneys General and the former head of the Organized Crime and Racketeering Section deny making or authorizing such a statement. (See Appendix A-1.)

(3) The right wing propaganda states that ever since the Enmons decision, "union bosses haven't had to worry about federal prosecution for crimes of violence." That is not true.

If union members use violence to achieve illegitimate goals, such as the pursuit of "wages" for unwanted or fictitious services, they are subject to federal prosecution under the Hobbs Act. Other federal laws, such as the kidnapping statute, also apply to union members. Above all, union members—like all other Americans—are subject to prosecution under state civil and criminal laws for any and all violent acts they may commit.

(4) The right wing's published literature, and its 30-minute film, "Scepter of Violence," cites over two dozen incidents of so-called "labor violence" to support the need for S. 613. Any relation to the truth is entirely accidental. For example:

— It is alleged in the film that in Stormor, Nebraska, striking workers "pinned down a terrified [nonstriking] worker" and "repeatedly and expertly slashed the man with a razor." According to the local Chief of Police, the City Administrator, the City Prosecutor, the County Prosecutor, and the regional office of the National Labor Relations Board no such indicent ever occured. Local officials, however, are aware that a union steward "got beat up pretty bad" and his assailant was arrested. (See Appendix B.)

— It is alleged in the film that, at the National Rejectors plant in Hot Springs, Arkansas, three nonstriking workers were subjected to a "siege of terror" because they crossed the union picket line. The court trial transcript reveals no corroborated evidence to support this allegation. It does reveal, however, that the local Chief of Police entered the plant and found guns on the persons of two of the nonstriking workers. (See Appendix C.)

(5) The right wing says that local government officials are "overawed by powerful union chiefs" and are, therefore, "extremely reluctant" to prosecute cases of strike-related violence. But the incidents they cite prove this is false.

— At a Western Electric plant in Orange County, Florida, local police made several arrests of both union members and non-union workers. Trials have been scheduled. (See Appendix D.)

— At Jarl Extrusions in Elizabethton, Tennessee, a company security guard was killed. Local officials arrested and prosecuted an individual for that murder. The man, who was not a union member, was sentenced to 11-12 years in jail. A union-member accomplice was found guilty of two counts of manslaughter. (See Appendix E.)

— At Jupiter Chemicals in Lake Charles, Louisiana, a union official was sentenced to 22 years in connection with the murder of a nonstriking worker. The convicted man was prosecuted by the office of the Louisana Attorney General. That official has declared that state laws and local law enforcement agencies are fully adequate "to deal with strike-related violence." (See Appendix F.)

—A union official subjected two female workers to sexual harassment in a non-strike-related incident in Oakland, California. That official was prosecuted by local authorities and sentenced to jail. (See Appendix G.)

—In Ravenna, Ohio, local law enforcement officials arrested and prosecuted striking workers engaged in disorderly conduct and interference with police officers. (See Appendix H.)

These are the "worst case" incidents cited by The National Right to Work Committee and its allies in their fund-raising materials. We do not condone the incidents, but we do point out that local officials were quite capable and far from reluctant to prosecute illegal conduct.

(6) As the best evidence of The Right to Work Committee's anti-worker bias, their materials never mention that striking workers are often the victims of strike-related violence.

—In Wilkes Barre, Pennsylvania, striking newspaper workers were run over by company trucks leaving the plant. A company security guard was arrested for aggravated assault. (See Appendix I.)

—In Beckley, West Virginia, two coal company guards were arrested for firing shotguns at striking union officials. (See Appendix J.)

—In Belle Glade, Florida, a striking worker was killed when she was run over by a company truck. (See Appendix K.)

—In Newport News, Virginia, a phalanx of state and city police swept pickets and bystanders alike before them in a fury of swinging clubs and biting attack dogs. The police drove away every picket and then attacked the striking union's headquarters, sending one worker through a window and beating others. (See Appendix L.)

—In Iron Wood, Minnesota, five non-union employees at a wood plant attacked and beat striking union members on a picket line. Windows on two trailers used by the strikers were broken and the walls smashed in. The guilty non-union members were brought to court by local officials and punished. (See Appendix M.)

—In Van Buren, Arkansas, three striking workers were injured when a pickup truck plowed through their picket line. Local police arrested the driver. (See Appendix N.)

(7) The Right To Work Committee also finds it difficult to reveal that its sponsors — the employer community — have on occasion been the direct cause of the violence they seek to blame on striking workers.

—The owner of a coal company in Pennington Gap, Virginia was found guilty of conspiring to bomb his own mining auger in order to create bad publicity for striking workers. The falsified bombing incident was used by the employer to get the State's governor to declare a state of emergency and to double the contingent of state police in the coalfields. (See Appendix O)

—A Virginia trucking company official conspired to inflict damage to his own trucks and those of another trucking company and to blame that damage on striking workers. He then successfully sued the union for damages, until a U.S. District Court discovered the "fabricated acts" and overturned the decision. (See Appendix P.) (See Appendix Q for other instances of instances The Right to Work Committee ignores.)

The scope of the federal criminal law in regulating wrongdoing during labor disputes should be based on a reasoned appraisal of the proper role of the national government in a federal system and on a proper understanding of the facts. If that approach is followed in this instance, we are certain that S. 613 will not be enacted into law.

Enclosures.

Appendixes A to Q follow:

THE TRUTH ABOUT THE NATIONAL RIGHT TO WORK COMMITTEE CHARGES

APPENDIX A

CHARGE: "The U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms reports that labor-related violence has replaced political terrorism as the number one cause of property damage in this country."

FACT: The 1980 report of the Bureau of Alcohol, Tobacco and Firearms shows that "labor-related" incidents--which also include acts against striking workers--account for only 4.3 percent of all reported bombing incidents. That puts the "labor" statistical category a distant fifth on the list.

Commenting on the above charge, a spokesperson for the Bureau of Alcohol, Tobacco and Firearms had the following statement:

"The category of Labor Related Incidents listed in Tables 9, 10 and 27 of the Annual Report of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, entitled 'Explosives Incidents 1980' includes in that category incidents which could have been perpetrated by members of labor or management or others attempting to embarrass either group. The statistics are not based on convictions or indictments but rather on incidents as reported and an analysis of such incidents by ATF staff. We believe the Reader's Digest article of August, 1981, entitled 'We'll Get Those Scabs!', quoting ATF statistics is inaccurate--for purposes of explosives related statistics we do not have a category entitled political terrorism or one of union violence nor were we the source of any of the allegations contained in that article."

SOURCE: Robert J. Creighton, Special Agent in Charge, Explosives Enforcement Branch, Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department

APPENDIX A-1

CHARGE: "Top officials in the U.S. Justice Department have said publicly that 'organized crime in (organized) labor is probably the most serious problem in the criminal field. It overrides everything else.' "

FACT: This allegation was never made by any "top official" of the U.S. Justice Department. In 1978 hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affiars, Senator Sam Nunn said: "Concerns have also surfaced in the news media, for example, a Justice Department prosecutor was recently quoted as saying that 'organized crime in labor is probably the most serious problem in the criminal field!' " (emphasis added)

However, Kurt W. Muellenberg, head of the Justice Department's Organized Crime Racketeering Section in 1978 and a witness before the Nunn Subcommittee in 1978, has stated that this assertion was never made or authorized by him. Mr. Muellenberg is currently a Criminal Division attorney in the Justice Department. In addition, former Attorneys General Griffin Bell and Benjamin Civiletti deny making or authorizing such a statement. And Phillip Heyman, former Assistant Attorney General in charge of the Criminal Division, has declared that he does not believe the assertion is true.

APPENDIX B

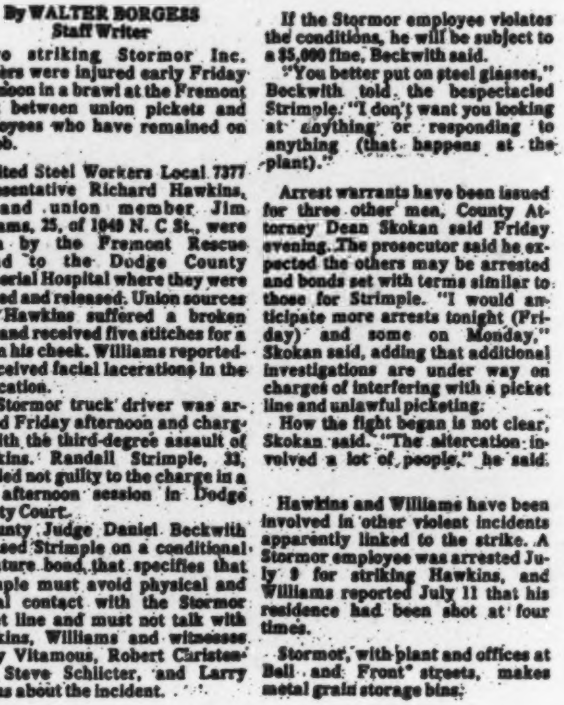
CHARGE: "A violent campaign against nonstriking employees of a Fremont, Nebraska grain bin factory took an ugly turn with recent reports that two thugs pinned down a terrified worker while a third assailant, in a cold-blooded act of cruelty calculated to inflict excruciating physical and psychological pain, repeatedly and expertly slashed the man with a razor, but stopped short of killing him."

FACT: The Fremont, Nebraska Chief of Police, the City Prosecutor, the City Administrator, and officials of the regional branch of the National Labor Relations Board all expressed familiarity with the lockout of workers at the Stormor Company in Fremont, and have responded to complaints of violence, such as an assault on Union Representative Richard Hawkins. But none had heard anything about this alleged "razor slashing" incident. Neither the alleged victim nor the National Right to Work Committee had filed any complaint.

SOURCE: Fremont, NE Chief of Police Francis Hurt
Fremont City Prosecutor Dean Skokan
Fremont City Administrator Jack Sutton
National Labor Relations Board Kansas City Regional Office spokesman
Richard Auslander

(From the Fremont Tribune, Saturday, July 25, 1981)

FIGHT INJURES TWO AT STORMOR



By WALTER BORGESS
Staff Writer

Two striking Stormor Inc. workers were injured early Friday afternoon in a brawl at the Fremont plant between union pickets and employees who have remained on the job.

United Steel Workers Local 7377 representative Richard Hawkins, 52, and union member Jim Williams, 25, of 1049 N. C St., were taken by the Fremont Rescue Squad to the Dodge County Memorial Hospital where they were treated and released. Union sources said Hawkins suffered a broken nose and received five stitches for a cut on his cheek. Williams reportedly received facial lacerations in the altercation.

A Stormor truck driver was arrested Friday afternoon and charged with the third-degree assault of Hawkins. Randall Strimple, 33, pleaded not guilty to the charge in a late afternoon session in Dodge County Court.

County Judge Daniel Beckwith released Strimple on a conditional signature bond that specifies that Strimple must avoid physical and verbal contact with the Stormor picket line and must not talk with Hawkins, Williams and witnesses Terry Vitamous, Robert Christenson, Steve Schlicter, and Larry Piscus about the incident.

If the Stormor employee violates the conditions, he will be subject to a $5,000 fine, Beckwith said.

"You better put on steel glasses," Beckwith told the bespectacled Strimple. "I don't want you looking at anything or responding to anything (that happens at the plant)."

Arrest warrants have been issued for three other men, County Attorney Dean Skokan said Friday evening. The prosecutor said he expected the others may be arrested and bonds set with terms similar to those for Strimple. "I would anticipate more arrests tonight (Friday) and some on Monday," Skokan said, adding that additional investigations are under way on charges of interfering with a picket line and unlawful picketing.

How the fight began is not clear, Skokan said. "The altercation involved a lot of people," he said.

Hawkins and Williams have been involved in other violent incidents apparently linked to the strike. A Stormor employee was arrested July 9 for striking Hawkins, and Williams reported July 11 that his residence had been shot at four times.

Stormor, with plant and offices at Bell and Front streets, makes metal grain storage bins.

APPENDIX C

CHARGE: An August 1981 Reader's Digest report of a Right to Work Committee-backed suit against the United Steelworkers Union includes the following charges:

"Fired, (union local President Frank) Russell continued to boss the union from his home."

FACT: Russell had been elected president for most of his years at the plant. He was an effective leader, and National Rejectors, Inc. had twice tried to fire him because of this. Arbitrators ordered the company to rehire Russell because the discharges had been without just cause.

CHARGE: "Russell demanded a strike."

FACT: Workers voted 248-37 to strike because of many unresolved grievances.

CHARGE: "(The few nonstriking workers) were confronted by scores of union members brandishing tire tools. The crowd began howling with rage..."

FACT: No evidence of this charge was produced at the trial. What was admitted was that two of the nonstrikers had illegally carried guns into the plant. Hot Springs, Arkansas Police Chief Lieutenant Floyd Orrell testified that he confiscated the weapons. He also testified that he did not see any tire tools or other objects in the hands of strikers.

CHARGE: "Only Dana Milligrock, a shy, soft-spoken woman whose silence seemed especially to infuriate the union members, chose to return to work."

FACT: During the trial, Milligrock testified that she had been on narcotics and had served a jail term for passing bad checks. The "shy" Milligrock had been married five times, had carried a gun to the plant, daring anyone to "mess with" her, and had made obscene gestures at strikers.

SOURCE: Transcript, Boyd v. Russell, Saline County, Arkansas Circuit Court No. CIV-78-488, May, 1980.

APPENDIX D

CHARGE: "Lawless Union Militants Attack Police in Florida: AFL-CIO picketers have been showering independent construction workers and local lawmen in Orange County, Florida, with rocks, bricks, and bottles in a spring-long spree of violence..."

FACT:: Orange County Sheriff Captain Chuck Simmons estimated that as many as 100 arrests have been made on both sides of this dispute. Charges have varied from misdemeanors to major assault charges, including as many as 20-25 felony charges, such as battery against a police officer. Right To Work Committee allegations that local law enforcers fail to bring lawbreakers to justice in such cases ring false in view of the many arrests made in Orange County.

SOURCE: Orange County, FL Sheriff Captain Chuck Simmons

APPENDIX E

CHARGE: An August 1981 Reader's Digest article which reported a Right to Work Committee suit against the United Steelworkers included the following: "Elizabethton, Tenn.: Striking steelworkers went on a rampage here two years ago, unleashing a series of bombings, shootings and acts of arson against non-striking workers at the Jarl Extrusions Company. A company security guard was shot to death, a second employee shot as she drove to work, a third severely beaten, suffering permanent injury."

FACT: Elizabethton Assistant Chief of Police David Roe reports that Gary Ford and Thomas Hermon were arrested, tried and convicted of the murder. Hermon was considered the instigator, according to Carter County Sheriff's Department spokesman Richard Lewis. He was not a union member or employee of the Jarl Co. Hermon was charged with second-degree murder and assault with intent to commit murder, and was found guilty and sentenced to 10 years on the first count, 1-2 years on the second, to be served consecutively. Hermon was sent to Nashville State Penitentiary.

Ford was found guilty of two counts of involuntary manslaughter and was sentenced to two consecutive terms of 2-5 years each. He also was sent to the Nashville State Penitentiary.

Nonstriking employees were convicted of shooting into homes, according to Assistant Chief of Police Roe.

SOURCE: Elizabethton, TN Assistant Chief of Police David Roe
Carter County Sheriff's Department spokesman Richard Lewis

APPENDIX F

CHARGE: "Lake Charles, Louisiana, 1976: ...The father of two children, a 26-year-old construction worker who belongs to the 'wrong' union, lies sprawled on the floor of the demolished trailer, killed by the union gunfire. No convictions." (emphasis added)

FACT: In connection with the murder of Joe Hooper, Donald Ray Lovett was arrested, charged and convicted of aggravated criminal damange to property and conspiracy. He was found guilty of both charges and was sentenced to the maximum penalty, a total of 22½ years. In addition, at least two others were convicted of aggravated criminal damage to property.

FACT: Louisiana Attorney General William J. Guste, Jr. has expressed strong opposition to S. 613 for reasons detailed in a letter to Sen. Charles Mathias (R-MD) (attached).

SOURCE: William J. Guste, Jr., Louisiana Attorney General
Pat Quinlen, Chief Prosecutor, Louisiana Attorney General's Office.

State of Louisiana
DEPARTMENT OF JUSTICE

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

November 27, 1981

Honorable Charles Mathias
Chairman, Senate Sub-Committee
  on Criminal Justice
358 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

I am writing to express my opposition to the Thurmond Bill S.613.

Several fundamental issues are involved: The first issue is whether it is equal protection of the law to make picket line violence by union members a federal offense without making similar crimes by employer representatives a federal crime as well.

It seems to me this proposed legislation is fundamentally discriminatory against one class of citizens and represents unequal protection of the law.

The second issue is whether the country needs the Federal Government getting involved in crimes like simple assault or malicious mischief. State laws and local law enforcement agencies are fully adequate to deal with this kind of situation.

The F.B.I. and Federal Courts have far more important problems than to divert manpower and resources to handle this kind of problem.

Sincerely,

William J. Guste Jr.

WILLIAM J. GUSTE, JR.

WJG,Jr/sl

APPENDIX G

CHARGE: "Karin Seritis and Teri DeLoache were two young women looking for honest work as waitresses so they could work their way through college. But at the union hiring hall--where they were forced to go--the union boss had other ideas...The union official offered Karin and Teri a choice of 'jobs' in prostitution, or in a pornography studio, or performing sexual acts with animals at a private club."

FACT: Seritis, DeLoache and another waitress, Mary Snyder, won a civil suit against the union and its official, Ray Lane, for intentional inflection of emotional distress and breach of duty of fair representation. General and punitive damages totalled $225,000. Lane was forced from the union in disgrace and may have to pay $75,000 in personal damages to the waitresses.

SOURCE: Supreme Court of County of Alameda, CA

APPENDIX H

CHARGE: (Reader's Digest:) "Ravenna, Ohio: At least 40 striking teachers in this small community were arrested on charges of riot and obstruction of official business."

FACT: Forty-five people were arrested on charges of disorderly conduct, interference with a police officer, etc. All but two either pleaded guilty or were found guilty as charged; two were found guilty of lesser charges. Most were fined as much as $100 each. Once again, local authorities were not reluctant to arrest and prosecute.

SOURCE: Ravenna, OH Police Lieutenant Jerry Dietrich

APPENDIX I

CHARGE: "Wilkes-Barre, PA, October 1978. A mob of union toughs attacked a group of workers at the Wilkes-Barre Publishing Co."

FACT: Trouble on the picket line can be traced to the use of untrained but armed security guards to intimidate pickets. "Our impression was that there was very little training of the security guards," said Wilkes-Barre Police Chief John R. Swim. One guard was charged with employment as a security guard without the necessary state certification, Swim noted.

Local newspaper accounts provide a portrait of the strike much different from Right To Work Committee materials. Union members were the victims of various assaults by security guards and others:

Scranton Times, 10/9/78: "A Capital Cities guard, Stephen Foor, 23, of Pittsburgh, was arrested on charges of aggravated assault and battery after he allegedly used his vehicle to run down a picket, Frank Ancharski, Saturday."

Scranton Times, 10/10/78: "Thomas Murray, a printer on picket duty, was treated and released from Wilkes-Barre General Hospital after allegedly being hit in the fact with an ammonia-based fire repellant being sprayed through the chain-link fence by guards from the Wackenhut Security Service..."

Scranton Times, 10/14/78: "A company guard and a Wilkes-Barre man were arrested Friday on charges of rape and indecent assault upon a 38-year-old California woman who was staying at a Wilkes-Barre motel, according to police...Police said that incident allegedly took place at 2:30 a.m. Friday in a motel after the men engaged a 38-year-old woman in conversation, then allegedly forced themselves into her room and assaulted her."

According to union officials, the Wackenhut Security Service experienced difficulty in obtaining guards for duty in Wilkes-Barre. Shortly after the strike began, about 30 guards fled the plant. Wackenhut bused in 12 new guards from New York, but shortly after they arrived, they told strikers they wanted to leave. Their return fare was raised in a picket-line collection.

SOURCE: Wilkes-Barre, PA Chief of Police John R. Swim
Scranton Times

APPENDIX J

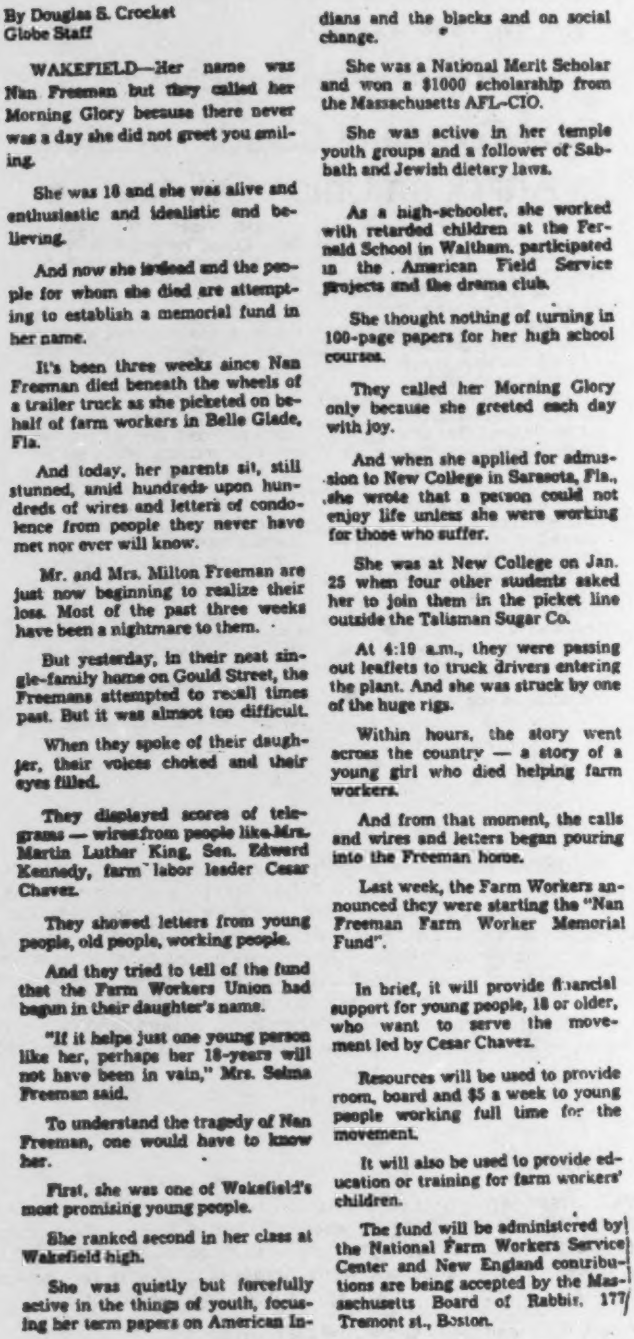
FACT: Nan Freeman, 18, a star student, National Merit Scholar, and religious youth group activist, was picketing the Talisman Sugar Company in Belle Glade, Florida when she was run over by a company trailer truck and killed.

SOURCE: Boston Evening Globe, 2/15/72 (attached)

(From the Boston Evening Globe, February 15, 1972)

Memorial fund in making

NAN FREEMAN--A MODEL FOR ALL



By Douglas S. Crocket
Globe Staff

WAKEFIELD—Her name was Nan Freeman but they called her Morning Glory because there never was a day she did not greet you smiling.

She was 18 and she was alive and enthusiastic and idealistic and believing.

And now she is dead and the people for whom she died are attempting to establish a memorial fund in her name.

It's been three weeks since Nan Freeman died beneath the wheels of a trailer truck as she picketed on behalf of farm workers in Belle Glade, Fla.

And today, her parents sit, still stunned, amid hundreds upon hundreds of wires and letters of condolence from people they never have met nor ever will know.

Mr. and Mrs. Milton Freeman are just now beginning to realize their loss. Most of the past three weeks have been a nightmare to them.

But yesterday, in their neat single-family home on Gould Street, the Freemans attempted to recall times past. But it was almost too difficult.

When they spoke of their daughter, their voices choked and their eyes filled.

They displayed scores of telegrams — wires from people like Mrs. Martin Luther King, Sen. Edward Kennedy, farm labor leader Cesar Chavez.

They showed letters from young people, old people, working people.

And they tried to tell of the fund that the Farm Workers Union had begun in their daughter's name.

"If it helps just one young person like her, perhaps her 18-years will not have been in vain," Mrs. Selma Freeman said.

To understand the tragedy of Nan Freeman, one would have to know her.

First, she was one of Wakefield's most promising young people.

She ranked second in her class at Wakefield high.

She was quietly but forcefully active in the things of youth, focusing her term papers on American Indians and the blacks and on social change.

She was a National Merit Scholar and won a $1000 scholarship from the Massachusetts AFL-CIO.

She was active in her temple youth groups and a follower of Sabbath and Jewish dietary laws.

As a high-schooler, she worked with retarded children at the Fernald School in Waltham, participated in the American Field Service projects and the drama club.

She thought nothing of turning in 100-page papers for her high school courses.

They called her Morning Glory only because she greeted each day with joy.

And when she applied for admission to New College in Sarasota, Fla., she wrote that a person could not enjoy life unless she were working for those who suffer.

She was at New College on Jan. 25 when four other students asked her to join them in the picket line outside the Talisman Sugar Co.

At 4:10 a.m., they were passing out leaflets to truck drivers entering the plant. And she was struck by one of the huge rigs.

Within hours, the story went across the country — a story of a young girl who died helping farm workers.

And from that moment, the calls and wires and letters began pouring into the Freeman home.

Last week, the Farm Workers announced they were starting the "Nan Freeman Farm Worker Memorial Fund".

In brief, it will provide financial support for young people, 18 or older, who want to serve the movement led by Cesar Chavez.

Resources will be used to provide room, board and $5 a week to young people working full time for the movement.

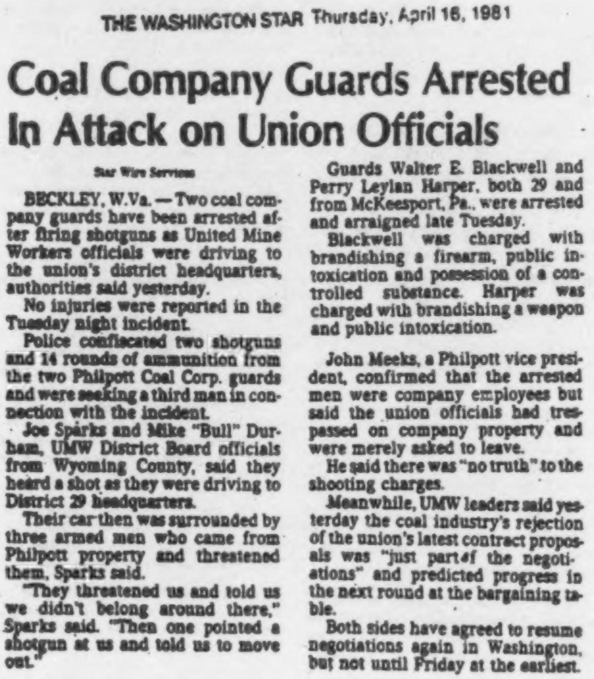
It will also be used to provide education or training for farm workers' children.

The fund will be administered by the National Farm Workers Service Center and New England contributions are being accepted by the Massachusetts Board of Rabbis, 177 Tremont st., Boston.

APPENDIX K

FACT: Two guards employed by the Philpott Coal Corporation of Beckley, West Virginia were arrested after they fired shotguns at United Mine Workers officials, according to local police. Charges included brandishing a firearm, public intoxication and possession of a controlled substance.

SOURCE: Washington Star, 4/16/81 (attached)



THE WASHINGTON STAR Thursday, April 16, 1981

Coal Company Guards Arrested In Attack on Union Officials

Star Wire Services

BECKLEY, W.Va. — Two coal company guards have been arrested after firing shotguns as United Mine Workers officials were driving to the union's district headquarters, authorities said yesterday.

No injuries were reported in the Tuesday night incident.

Police confiscated two shotguns and 14 rounds of ammunition from the two Philpott Coal Corp. guards and were seeking a third man in connection with the incident.

Joe Sparks and Mike "Bull" Durham, UMW District Board officials from Wyoming County, said they heard a shot as they were driving to District 29 headquarters.

Their car then was surrounded by three armed men who came from Philpott property and threatened them, Sparks said.

"They threatened us and told us we didn't belong around there," Sparks said. "Then one pointed a shotgun at us and told us to move out."

Guards Walter E. Blackwell and Perry Leylan Harper, both 29 and from McKeesport, Pa., were arrested and arraigned late Tuesday.

Blackwell was charged with brandishing a firearm, public intoxication and possession of a controlled substance. Harper was charged with brandishing a weapon and public intoxication.

John Meeks, a Philpott vice president, confirmed that the arrested men were company employees but said the union officials had trespassed on company property and were merely asked to leave.

He said there was "no truth" to the shooting charges.

Meanwhile, UMW leaders said yesterday the coal industry's rejection of the union's latest contract proposals was "just part of the negotiations" and predicted progress in the next round at the bargaining table.

Both sides have agreed to resume negotiations again in Washington, but not until Friday at the earliest.

APPENDIX L

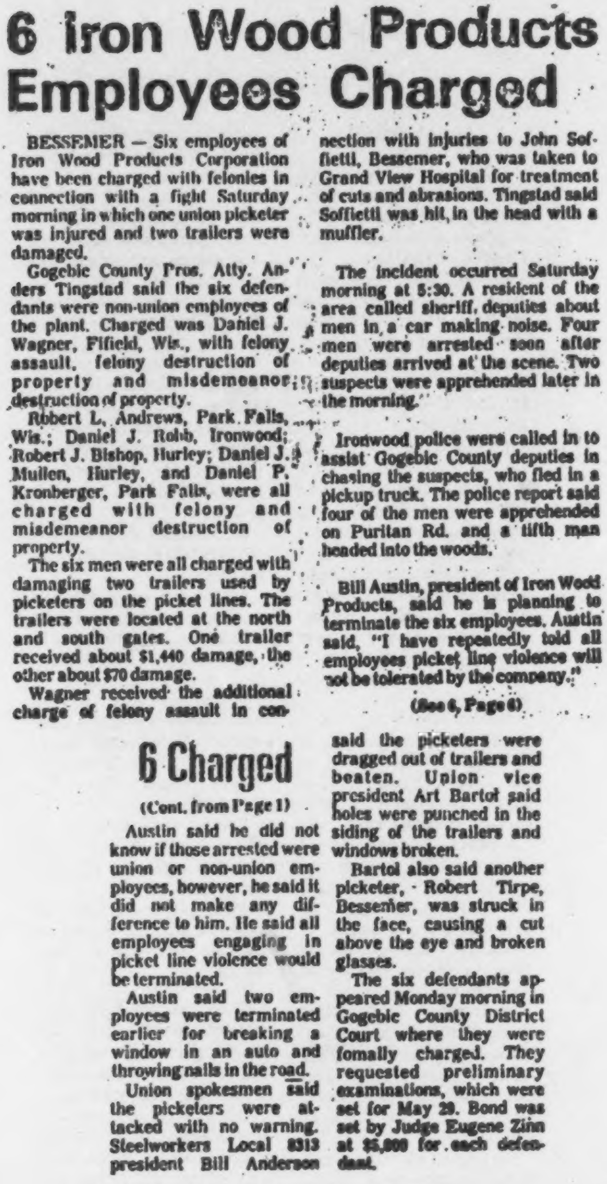
FACT: April 16, 1979. More than 70 persons were arrested and at least 30 injured as Newport News and Virginia State Police staged a series of confrontations with United Steelworkers striking the Newport News Shipbuilding Co. In the day's most serious incident, police stormed the union's strike headquarters, according to The Virginian-Pilot. Police swept pickets and bystanders alike in a fury of swinging clubs and biting attack dogs, according to Local 8888 officials. As the police rushed the union's headquarters without warning or warrant, one striker was knocked through a window. Police beat, kicked, and broke the leg of one striker as he lay unconscious on the floor, according to one eyewitness.

APPENDIX M

FACT: 5/16/81, Bessemer, MI: Five non-union replacement workers at the Iron Wood Products Corp. beat striking members of United Steelworkers Local 8313. One union member was struck from behind with an automobile muffler. Trailers being used by the picketers were damaged. The five non-union workers eventually were brought to court and ordered to pay restitution.

SOURCE: Ironwood, Michigan Daily Globe, 5/18/81 (attached)
Duluth News-Tribune, 6/25/81

Ironwood Daily Globe, 5/18/81



6 Iron Wood Products Employees Charged

BESSEMER — Six employees of Iron Wood Products Corporation have been charged with felonies in connection with a fight Saturday morning in which one union picketer was injured and two trailers were damaged.

Gogebic County Pros. Atty. Anders Tingstad said the six defendants were non-union employees of the plant. Charged was Daniel J. Wagner, Fifield, Wis., with felony assault, felony destruction of property and misdemeanor destruction of property.

Robert L. Andrews, Park Falls, Wis.; Daniel J. Robb, Ironwood; Robert J. Bishop, Hurley; Daniel J. Mullen, Hurley, and Daniel P. Kronberger, Park Falls, were all charged with felony and misdemeanor destruction of property.

The six men were all charged with damaging two trailers used by picketers on the picket lines. The trailers were located at the north and south gates. One trailer received about $1,440 damage, the other about $70 damage.

Wagner received the additional charge of felony assault in connection with injuries to John Soffietti, Bessemer, who was taken to Grand View Hospital for treatment of cuts and abrasions. Tingstad said Soffietti was hit in the head with a muffler.

The incident occurred Saturday morning at 5:30. A resident of the area called sheriff deputies about men in a car making noise. Four men were arrested soon after deputies arrived at the scene. Two suspects were apprehended later in the morning.

Ironwood police were called in to assist Gogebic County deputies in chasing the suspects, who fled in a pickup truck. The police report said four of the men were apprehended on Puritan Rd. and a fifth man headed into the woods.

Bill Austin, president of Iron Wood Products, said he is planning to terminate the six employees. Austin said, "I have repeatedly told all employees picket line violence will not be tolerated by the company."

(See 6, Page 6)

6 Charged

(Cont. from Page 1)

Austin said he did not know if those arrested were union or non-union employees, however, he said it did not make any difference to him. He said all employees engaging in picket line violence would be terminated.

Austin said two employees were terminated earlier for breaking a window in an auto and throwing nails in the road.

Union spokesmen said the picketers were attacked with no warning. Steelworkers Local 8313 president Bill Anderson said the picketers were dragged out of trailers and beaten. Union vice president Art Bartol said holes were punched in the siding of the trailers and windows broken.

Bartol also said another picketer, Robert Tirpe, Bessemer, was struck in the face, causing a cut above the eye and broken glasses.

The six defendants appeared Monday morning in Gogebic County District Court where they were fomally charged. They requested preliminary examinations, which were set for May 29. Bond was set by Judge Eugene Zinn at $5,000 for each defendant.

APPENDIX N

FACT: Van Buren, AK, 12/1/78: Three striking members of the American Flint Glass Workers Union, Local 717, were injured, one critically, when a truck driven by a non-striker plowed through a picket line. Police said the truck slowed down, then accelerated into a cluster of pickets who were moving out of the truck's way. One worker suffered a punctured lung, fractured skull, loss of one finger and possible impairment of one hand. The driver of the truck was charged with second-degree battery.

SOURCE: Southwest Times-Record, 12/2/78 (attached)

(From the Southwest Times-Record, December 2, 1978)

TRUCK HITS PICKETS IN VB LABOR DISPUTE

By KAY SPEED

Three persons were injured, one critically, Friday when a pickup plowed through a group of pickets at the Southwestern Glass Co. of Van Buren.

A Van Buren policeman, private security guard and about 40 strikers apparently witnessed the incident, which occurred about 6:43 a.m. in the driveway of the plant located in the Crawford County Industrial Park.

Police said the pickup slowed down to enter the driveway, then accelerated into a cluster of pickets who were moving out of the truck's way.

Tom Porter, striking Southwestern employee, said he was knocked down by persons trying to get out of the way of the truck. He said it was lucky the truck only struck the three men.

Injured were:

—Elmer Moses, 38, of Hackett, a skilled worker at the plant, who was listed in critical condition at Sparks Regional Medical Center.

—Delbert Junkins, 63, of Columbus, Ohio, a representative of Flint Glass Workers Union, who was listed in serious condition at Sparks.

—Robert Ludwick, 29, of Alma, an industrial worker for Southwestern, was listed in good condition at Crawford County Memorial Hsopital.

The name of the 28-year-old Alma man who allegedly ran into the three was withheld by police pending the filing of formal charges.

The suspect was released on $5,000 bond after being booked for investigation of assault with a deadly weapon with intent to kill.

Representatives of Local 717 of the glass workers union said they formed the local Oct. 2, but had been unsuccessful in attempts to negotiate a contract with Southwestern's management.

One striker said workers had been promised when the plant opened two years ago that wages and other work conditions would be competitive with those paid at Thomas Industries Inc. in Fort Smith.

He said many of the workers had left Thomas to come to Southwestern with that understanding. Recently, the man added, Dwight Morland, president of Southwestern, had failed to live up to his promise.

Morland had no comment on the incident or the strike for the press.

Striking employees said they began the strike Friday morning and are prepared to continue it until they obtain a contract from Morland.

Patrolman Gary Bell, who witnessed the incident, said he was sent to the scene about 6 a.m. when plant officials, who feared trouble, called Van Buren police.

He said about 40 picketers, 10 of them female, had gathered at the plant site when the incident occurred.

As employees arrived for work, he said pickets moved out of the way of their vehicles.

After the incident, Bell arrested two of the strikers for disorderly conduct, for their alleged yelling of obscenities at personnel inside the plant.

Strikers said the man who hit the three didn't stop his vehicle until he parked it in back of the plant. He then walked inside, where he remained until police arrived to arrest him. He returned to the plant after posting bond.

Police said late Friday there had been no further incidents at the plant.

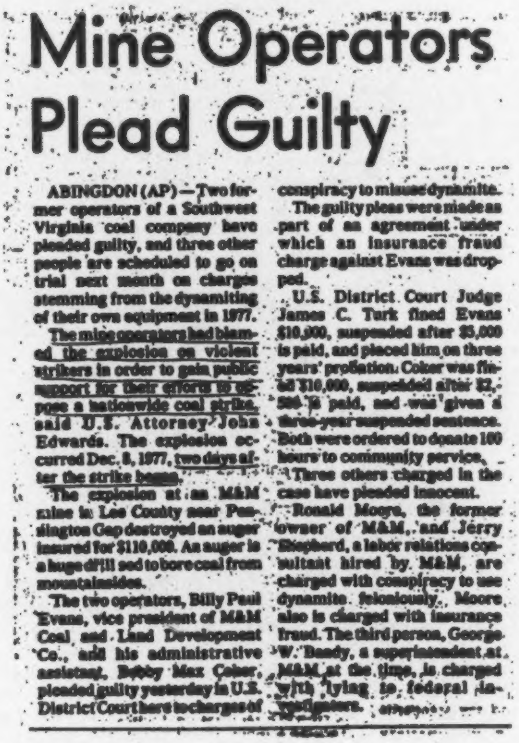
APPENDIX O

FACT: The owner of the M&M Coal and Land Development Co. in Pennington Gap, VA was found guilty of conspiring to bomb his own mining auger, a huge drill insured for $110,000, in order to create bad publicity for striking miners. The bombing was instrumental in prompting Governor John Dalton to double the contingent of state police in the coalfields and to place the National Guard on alert, according to the Richmond Times-Dispatch, 10/18/80.

SOURCE: Richmond News Leader, 10/26/80 (attached)
Richmond Times-Dispatch, 10/18/80

Richmond News Leader

October 26, 1980



Mine Operators Plead Guilty

ABINGDON (AP)—Two former operators of a Southwest Virginia coal company have pleaded guilty, and three other people are scheduled to go on trial next month on charges stemming from the dynamiting of their own equipment in 1977.

The mine operators had blamed the explosion on violent strikers in order to gain public support for their efforts to oppose a nationwide coal strike, said U.S. Attorney John Edwards. The explosion occurred Dec. 8, 1977, two days after the strike began.

The explosion at an M&M mine in Lee County near Pennington Gap destroyed an auger insured for $110,000. An auger is a huge drill used to bore coal from mountainsides.

The two operators, Billy Paul Evans, vice president of M&M Coal and Land Development Co., and his administrative assistant, Bobby Max Coker, pleaded guilty yesterday in U.S. District Court here to charges of conspiracy to misuse dynamite.

The guilty pleas were made as part of an agreement under which an insurance fraud charge against Evans was dropped.

U.S. District Court Judge James C. Turk fined Evans $10,000, suspended after $5,000 is paid, and placed him on three years' probation. Coker was fined $10,000, suspended after $2,500 is paid, and was given a three-year suspended sentence. Both were ordered to donate 100 hours to community service.

Three others charged in the case have pleaded innocent.

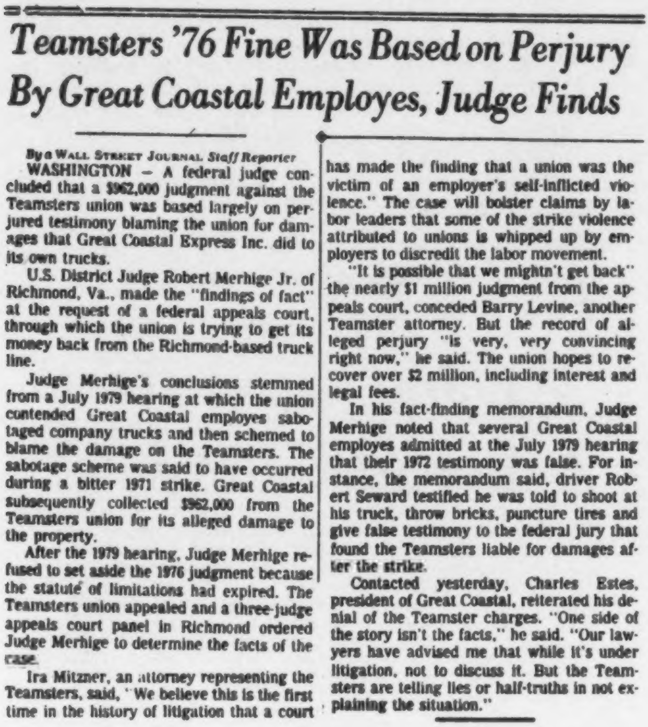
Ronald Moore, the former owner of M&M, and Jerry Shepherd, a labor relations consultant hired by M&M, are charged with conspiracy to use dynamite feloniously. Moore also is charged with insurance fraud. The third person, George W. Bandy, a superintendent at M&M at the time, is charged with lying to federal investigators.

APPENDIX P

FACT: Richmond, VA: Management of Great Coastal Express, Inc. sabotaged its own company trucks and then schemed to blame the damage on striking union members. The company successfully sued the union and collected $962,000 in damages--a decision that was overturned on appeal when Great Coastal employees admitted that they had lied before a federal jury and had in fact shot at, thrown bricks at, and otherwise damaged the trucks themselves.

SOURCE: Wall Street Journal, 9/1/81 (attached)

(From the Wall Street Journal, September 1, 1981)



Teamsters '76 Fine Was Based on Perjury By Great Coastal Employes, Judge Finds

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – A federal judge concluded that a $962,000 judgment against the Teamsters union was based largely on perjured testimony blaming the union for damages that Great Coastal Express Inc. did to its own trucks.

U.S. District Judge Robert Merhige Jr. of Richmond, Va., made the "findings of fact" at the request of a federal appeals court, through which the union is trying to get its money back from the Richmond-based truck line.

Judge Merhige's conclusions stemmed from a July 1979 hearing at which the union contended Great Coastal employes sabotaged company trucks and then schemed to blame the damage on the Teamsters. The sabotage scheme was said to have occurred during a bitter 1971 strike. Great Coastal subsequently collected $962,000 from the Teamsters union for its alleged damage to the property.

After the 1979 hearing, Judge Merhige refused to set aside the 1976 judgment because the statute of limitations had expired. The Teamsters union appealed and a three-judge appeals court panel in Richmond ordered Judge Merhige to determine the facts of the case.

Ira Mitzner, an attorney representing the Teamsters, said, "We believe this is the first time in the history of litigation that a court has made the finding that a union was the victim of an employer's self-inflicted violence." The case will bolster claims by labor leaders that some of the strike violence attributed to unions is whipped up by employers to discredit the labor movement.

"It is possible that we mightn't get back" the nearly $1 million judgment from the appeals court, conceded Barry Levine, another Teamster attorney. But the record of alleged perjury "is very, very convincing right now," he said. The union hopes to recover over $2 million, including interest and legal fees.

In his fact-finding memorandum, Judge Merhige noted that several Great Coastal employes admitted at the July 1979 hearing that their 1972 testimony was false. For instance, the memorandum said, driver Robert Seward testified he was told to shoot at his truck, throw bricks, puncture tires and give false testimony to the federal jury that found the Teamsters liable for damages after the strike.

Contacted yesterday, Charles Estes, president of Great Coastal, reiterated his denial of the Teamster charges. "One side of the story isn't the facts," he said. "Our lawyers have advised me that while it's under litigation, not to discuss it. But the Teamsters are telling lies or half-truths in not explaining the situation."

APPENDIX Q

--Brownsville,KY, July 13, 1972. Eugene Hampton, 27, father of three, was shot to death as he served on strike duty at the Kellwood Co. Arrested and charged with murder was Harvey Gonterman, husband of one nonstriking employee and son of another. Gonterman was tried and acquitted of the murder. No other suspect was arrested, according to the Edmonson County Cricuit Court Clerk's Office.

--Vacaville, CA, August 21, 1978. Randy Hills, 24, was picketing on the shoulder of a road near the Lucky Stores distribution center when he was struck and killed by a car driven by a replacement worker leaving the plant. The nonstriking worker was driving at 55 mph with his headlights turned off when he hit Hills at 8:20 p.m., according to the San Francisco Examiner. The driver did not stop but continued driving home, where he later was arrested and charged with felony hit and run and manslaughter. But the charges were dropped and the incident ruled accidental.

--Martinez, CA, Jan. 5, 1969. Richard Jones, 50, was run over by a Standard Oil tanker truck as he picketed the entrance to Standard's Avon transfer station. Jones later died of his injuries. Police considered the incident accidental and did not bring charges against the driver. But four days later two Martinez policemen were knocked down and injured by another truck that reportedly rammed through picket lines without slowing down, according to the San Francisco Chronicle. In this case the driver was charged with assault with a deadly weapon. And on Jan. 17 police arrested another truck driver for knocking down a picketer with his truck and then threatening her with a gun, according to the Chronicle.

--Tracy, CA, Aug. 6, 1976. Norman Ray Lewis, 33, father of five, was picketing the Handy Man distribution center when a truck driven by a company supervisor ran over and killed him. The driver was charged with felony vehicular manslaughter. Certain testimony suggested that the killing was intentional, but the jury believed it was accidental and the supervisor was acquitted, according to the Stockton Record. A settlement of $190,000 was made to Lewis' family in a civil suit against Handy Man.

TABLE 9.—BOMBING INCIDENTS BY MOTIVE, INCLUDING PROPERTY DAMAGE FOR 1979–80

Motive	Incidents		Property damage [1]		Percentage [2]	
	1979	1980	1979	1980	1979	1980
Vandalism	169	174	$57.6	$590.0	37.4	41.0
Revenge	147	147	285.4	472.2	33.3	34.7
Protest	41	38	639.4	670.7	9.3	8.9
Labor related	38	18	646.2	1,156.2	8.6	4.3
Extortion	33	23	176.8	3,098.9	7.5	5.4
Homicide	11	11	35.8	108.6	2.6	2.6
Insurance Fraud	5	6	242.0	312.0	1.1	1.4
Suicide	1	7	.2	1.4	.2	1.7
Unknown [3]	460	498	3,053.7	3,522.4		
Total	901	922	5,137.1	9,932.4	100.0	100.0

[1] Estimated dollars losses are listed in thousands. Amount of property damage was not reported in all incidents.

[2] These percentages do not reflect 460 incidents in 1979 and 498 incidents in 1980 for which the motive was undetermined.

[3] This category reflects those incidents where the motive was undetermined.

From: "Explosives Incidents, 1980," Annual Report by the Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury.

STATEMENT OF REED LARSON, PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE, ACCOMPANIED BY REX REED, ATTORNEY

Mr. LARSON. Mr. Chairman, I believe you have me first on the list?

Senator MATHIAS. I will be glad to take you all in whatever order you all decide you would like to go, but as of now you are first.

Mr. LARSON. All right. Mr. Chairman, for the record I am Reed Larson, the president of the National Right to Work Committee, and I have associated with me today Mr. Rex Warner, an attorney, who can I think help us considerably if there are technical or legal questions in connection with this.

I am president of the National Right to Work Committee, which is a single purpose citizens organization made up of about 1½ million Americans who have banded together for the sole purpose of combating compulsory unionism.

At this point I think it is very important that we correct the record. I appreciate your inviting us here today, but we are not part of a business panel. The very fact that somebody has inadvertently recognized this issue as one between business and labor really focuses on the underlying problem we have in dealing with the excessive and violent power of union officials.

I think it is very important that you understand that we are not representing business. We have a lot of business people that support us. We have a lot of union people that support us. We are a citizens organization, and I am very glad to be joined here by some responsible business spokesmen because this is an issue on which business should be very much concerned, and some of it is and some of it isn't.

I am going to ignore the intemperate remarks by Larry Gold as far as his unsupported attacks on our organization. I am reminded of the old saw that we have all heard that when a lawyer is weak on the facts, he argues the law; when he is weak on the law he argues the facts; and when he is weak on both, he just shouts and pounds the table and denounces the motives of his adversary. I think that is what we saw here today for just about an hour and a half.

Incidentally, could I inquire, Mr. Chairman, about how much time you will be able to give us? We are way behind your schedule.

Senator MATHIAS. We are very much behind schedule, for which the Chair apologizes, but you see what an interesting subject we have uncovered here. Now we are going to have one problem in that we have a vote on cloture at noon, I believe.

Mr. LARSON. Noon? I believe Mr. Gold was given an hour and a half.

Senator MATHIAS. Well, we will see that you get equal time.

Senator BIDEN. It could be since Mr. Gold pounded on the table so much, he could have done it, had he had the facts, in 15 minutes. Maybe you can do it that way.

Mr. LARSON. Well, there has been a lot of erroneous information put before this committee and——

Senator MATHIAS. I am mistaken. The vote is at 1. So you will have the better part of the next hour.

Mr. LARSON. Mr. Chairman, we appreciate your giving us this opportunity, and I am not going to burden you with reading the entire statement, which was presented in writing. I know you have it for the record and I want to just hit some of the highlights in the early part of it and then hopefully address some of the specific concerns that have been raised by members of the committee this morning.

Getting back to Mr. Gold, he of course, in attempting to defend this union special privilege, has attacked the veracity of some of our material and some of the cases that we cited. Well, I want to point out for the record that we had requested an opportunity, if the committee could have found the time, to present the individuals specifically whose experiences are recounted in our material so that members of the committee could have an opportunity to determine the facts for themselves.

Several of those employee victims are here in the hearing room today and it is quite apparent that we are not going to have time. But if anybody on the committee is interested in getting to the root of this dispute, as far as these individuals and the experiences typified by the abuse they have suffered is concerned, we will have them available after the hearing.

Let me just summarize some of the first part of my written statement, which I think sort of sets the tone, and then address some specific concerns that have been mentioned this morning.

Our organization's concern with compulsory unionism extends not only to the contractual form, in which an employer agrees to fire employees who decline to pay dues to an unwanted union, but also to the imposition of unwanted union membership through violence or threats of violence. The latter has been aptly described as the pickhandle closed shop. That of course is the subject to which we address ourselves today in connection with S. 613, and that effort to achieve equal application of the Hobbs Anti-Extortion Act to every American.

This bill, S. 613, will close a loophole in the Hobbs Act so that union officials will be treated exactly like every other American, and thus would be subject to prosecution for violence perpetrated in pursuit of extortionate objectives.

The words of Nobel Laureate Friedrich Von Hayek provide a sobering but realistic backdrop for the examination of this issue. Dr. Hayek observed that the United States has reached "a state where labor unions have become uniquely privileged institutions to which the general rules of law do not apply. Unions have become the only instance in which governments signally fail in their prime function: the prevention of coercion and violence."

Ironically, 13 years after Professor Hayek made that statement, the U.S. Supreme Court handed down its infamous *Enmons* decision, and thereby made a bad situation even worse. Under present law, union officials and only union officials enjoy a wide array of special privileges and legal immunities, available to no other group of Americans.

But among all those privileges and immunities, none is so outrageous and utterly indefensible as that established by the *Enmons* decision: the immunity from Federal prosecution for violent acts of extortion perpetrated in pursuit of legitimate union objectives.

Actually, the case in support of S. 613 rests on only one issue. Should any group of Americans be above the law? I think the answer to that question is obvious, but the results we have seen, after some 8 years of experience under the *Enmons* doctrine, indicate that the practical results, as well as the violation of principle involved, have seen an increasing wave of violence. They have shown also the inadequacy of local and State law enforcement officials to deal with the well-coordinated, orchestrated, and international union-instigated campaigns of violence.

Mr. Gold mentioned the report of the U.S. Bureau of Alcohol, Tobacco and Firearms, and reported I believe with some satisfaction that instead of leading the statistics as to the causes of bombings and other violence, that labor disputes are now down to a smaller proportion.

Well, whether those facts are accurate or not, if even 10 percent of the bombings and property destruction acts reported by that Bureau are caused by union-instigated activities, it is still a problem that really needs to be dealt with.

Senator MATHIAS. Now since this seems to be one of the statistics that is in dispute in this hearing, what year's statistics are you looking at?

Mr. LARSON. We were looking at the statistics in 1977 and 1978, when that Bureau reported that——

Senator MATHIAS. I think that explains part of the discrepancy. If you look at the Annual Report by the Bureau of Alcohol, Tobacco and Firearms for 1980, you get the 4.3 percent figure that Mr. Gold quoted, table No. 9.

Mr. Larson. Well, if that is indeed accurate, that is an encouraging development, but it does not do away with the problem. If there is any violence at all that is attributed to union activity, it is something that we ought to be concerned with, and whether this Bureau has found it or not, the record is indisputable.

I would like to bring to your attention now a chart that we have prepared over here based on a 6-year survey of reported acts of union violence. You see here, this is the aftermath of *Enmons*. Publicly reported acts of union violence in 1976, and we have the documentation available on this if you are interested in pursuing it further. In 1976 we had 188 incidents of union violence that were publicly reported so far as our survey data, and I am sure those were incomplete. But on the same basis, it has grown today until just in 11 months of 1981, we are up to 449 acts of violence. That is more than one a day.

Now the opponents of S. 613 would have us believe that union-inspired violence is limited to what they euphemistically call minor picket line scuffles. Well, in the more than 2,000 recorded and reported acts there in the last 6 years, nearly 800 of these involved circumstances where picketing wasn't even taking place. And certainly the facts of *Enmons* itself would indicate whether or not picketing was taking place, the violence at issue had nothing to do with a picket line dispute.

So as long as this *Enmons* loophole exists, it provides union terrorists an additional shield behind which they can practice their illegal activities, and I expect that there is every reason to believe that this upward trend in the incidents of union violence will continue unless something is done, unless some action is taken, and hopefully this committee will take the first step.

Now those who try to defend the union officials' unique immunity to commit violence contend that the problem should be left entirely to local and State officials.

Senator Mathias. Can I interrupt you to say, because I do not want to forget it at a later point, if we could have that documentation for the record?

Mr. Larson. OK. I think I have a computer printout.

Senator Mathias. You can supply that for the record at a later time.

Mr. Larson. Yes, here it is.

Senator Mathias. Just by chance.

Mr. Larson. Senator, I am glad you asked.

Senator Mathias. Thank you. We will look at it at a later point.

Mr. Larson. There is, based on our own data, and I am sure that anybody who has looked at it would agree that it is incomplete, but it is at least an idea of what is going on.

Let me turn now briefly to some of the concerns that were raised in the discussion earlier, particularly by members of this committee.

Mr. Chairman, you yourself and other members raised the question of the budget and the cost of this law enforcement. Well, I think most Americans agree that the No. 1 function of government is to protect its citizens from violence perpetrated by other citizens. If government is able to do one thing and one thing only, it is to prevent the use of force by one citizen against another.

Senator **Mathias**. I agree.

Mr. **Larson**. And there can be no higher priority, Senator.

Senator **Mathias**. Let me just embrace that statement and agree with you. That is why I am so concerned that the Justice Department budget in direct law enforcement activities may be reduced.

Mr. **Larson**. I know this budget problem that you are wrestling with is a tough one, but I think the one area in which you get no disagreement at all, except from some of those perhaps with a vested interest in lax law enforcement, and they are certainly a very small minority, the No. 1 concern of people is that we have protection from force, and particularly in an area such as the one we are discussing today where we are talking about vicious force used against helpless employees whose pleas have been spurned by local law enforcement officials—who have been told, as have some of those who we have right here in the hearing room today: "Don't talk to me," the sheriff said, "I'm a union man." Another person who had been subject to fire bombings and a campaign of harassment was told by local law enforcement officials: "We don't take sides in labor disputes, and this is a labor dispute."

I could go on and on. These things are on the record time and time again. And I think the testimony of Mr. Rose this morning helped again to underscore just how serious this problem is. The Justice Department has not been interested in this problem. He could not cite a single example, and they are everywhere. We have been trying to get them before the Justice Department, before Members of Congress. This is a problem that is pervasive, and the Justice Department has been sitting around worried about the political ramifications of enforcing a law where the interests of union officials are concerned.

And of course the dispute over whether this is an issue, and you raised a very proper concern right at the outset, Mr. Chairman, as to whether we really want to ask the Federal Government to move into this area where local authority presumably has jurisdiction.

Well, the question to ask is, "Why is it only union violence that is exempt under this law?" We are talking about removing a loophole that specifically protects just one class of citizens from the imposition of a Federal law against violence.

You mentioned the *Thordarson* decision and certainly we need to address that. Mr. Reed with me can speak in specifics and more detail, but in our judgment, in our reading of that decision, it does not lessen the need for this amendment. In fact, it underscores the need for it.

The argument that union officials are making in that case, and their argument was accepted so far by two of the four judges that have looked at this case, their argument was that the loophole given them in Hobbs by the *Enmons* decision should be extended to all Federal laws against criminal activity. That is what they argued and they got two out of four judges to agree with them so far.

But the U.S. attorney that prosecuted that case went to great pains to construct that case around the disability imposed on him by the *Enmons* decision. And he very carefully wrapped it around this big loophole. According now to the appellate court, on the basis of 2 to 1, he was successful in reaching out and finding some criminal penalties that he could apply. But the way he shaped his case was clearly based on his recognition that he had a big disability in dealing with this problem of union violence.

Then one other area that I think needs to be addressed was raised by Senator Specter. He seemed to be totally unaware of any problem of the kind that we have raised here, where individuals are not adequately protected by local law enforcement officials. Well again, this is one of those areas where we felt that the committee would benefit in its looking into this issue by talking to some employees who had actually been subjected to this problem, and one of those particular employees who is in the hearing room today is from Senator Specter's State, from the town of North East, Pa.

This particular gentleman refused to participate in a strike which was called for one purpose and one purpose only. It was not a wage dispute. It was an effort to force the employer to agree to fire those employees who would not pay dues to the union. That was the only issue.

And this gentleman, Mr. Yokom, could not in good conscience support this kind of a demand, so he continued to go to his job, and he has suffered a horrendous campaign of violence. His family has been harassed. His 3-year-old daughter was assaulted with a wine bottle and fortunately was not injured seriously. His house has been firebombed. He gets little or no protection from the local police, and the sheriff's deputy, who was supposed to enforce an injunction against mass picketing, has publicly called him a scab.

This is what these people are up against. This is one of Senator Specter's constituents, and the Senator says there is not a problem.

One other area, and I would like to submit for the record something that deals with this very subject. It deals with the unique nature of union-inspired violence, in that the pattern is quite clear, and I have studied this problem for many, many years, that while the actual acts of violence, arson, the bombings, beatings, shootings, may be carried out by local union militants, there is overwhelming evidence that this is encouraged and inspired and incited by international union officials who know exactly what they are doing.

So the local law enforcement officials, no matter how diligently they do their job, are actually up against an international network of experts, and they have a terribly difficult time in dealing with it.

This is probably best typified by a case which was written up very thoroughly in the Reader's Digest recently. In Colorado, where the law enforcement officials did an absolutely magnificent job of breaking up an arson ring which for many years had been burning the construction jobs of employers who refused to force their employees to join the union.

The State officials actually did get a conviction of the torchman himself, the local union official that perpetrated it. But they were stopped at the State line when they tried to prosecute and tried to apprehend the international union officials that moved in and out of the State, orchestrating the campaign, and ultimately escaped scot-free while the local union official did time in a State penitentiary.

This was summarized in this Reader's Digest article, which is entitled "Arson to Order in the Building Trades." "'Hire our members or else' was the construction union's message in Colorado. The 'or else' was fire, and though the conspiracy in this one State has been crushed, a broader national problem has barely been touched."

Mr. Chairman, I would like to ask permission to add that to the material we are placing in the record. I think this would be very helpful to the committee.

Senator **Mathias**. Without objection, that will be so ordered.

[The Reader's Digest article referred to follows:]

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Arson-to-Order in the Building Trades

Hire our members, or else! was the construction unions' message in Colorado. The "or else" was fire. And though the conspiracy in this one state has been crushed, a broader national problem has barely been touched

By Charles Stevenson

At 5:33 a.m., April 12, 1968, a muffled blast in Denver ushered in the most arrogant and costly onslaught of organized arson in American history. In minutes, oil-primed flames reduced a nearly completed $170,000 apartment building to smoldering coals. Fire followed fire until, by 1974, more than 40 Colorado apartment and townhouse developments had been torched.

Contractors knew the reason for the arson. The building-trades unions were punishing them because they operated open shops, permitting non-union craftsmen to work. But the contractors couldn't prove it. Local police and fire-department investigators knew, too, but they couldn't prove it, either. The U.S. Department of Labor knew, but did nothing. The FBI knew, too, but gave up on the case.

But not the Colorado Bureau of Investigation (CBI). "We won't quit, no matter what," CBI director John MacIvor told his agent-in-charge, Carl Whiteside. They didn't. And thereby hangs a tale whose significance reaches far beyond Colorado.

"Organizing" Pattern. The CBI faced seemingly insurmountable handicaps when it got down to the job in January 1971, nearly three years after the arson wave began. Director MacIvor, 42, had served just four months after moving in from a suburban police chief's job; Whiteside, a 28-year-old former Maryland state trooper, had been on the job scarcely long enough to collect his first pay check. The agency was only 3½ years old and, though its assignment included far more than arson, could afford only seven agents besides Whiteside.

Whiteside and his agents first researched and cross-referenced the 16 fires that had occurred since 1968. Despite the fact that many builders were too scared to talk, a pattern of crime emerged. Union representatives would ask a builder to sign a contract binding him to employ only union members; the builders would refuse, and the union men would leave; then, just when a structure was almost completed, it would be set on fire. Afterward, a union representative would appear and pointedly ask if the builder didn't now feel that it was to his advantage to sign up.

That is exactly how builder Steven M. Stopa, the first victim, was handled by Tony Mulligan, chief organizer of the Northern Colorado Building and Construction Trades Council, the umbrella organization under which the various locals of 17 international building-trades unions had gathered. And the ploy was repeated time and again—ever more arrogantly, since no arrests were being made. "Jobs of this type that are non-union have been known to burn," Mulligan told the Lynch Construction Co.; 18 of its apartments went up in smoke that night to make it victim No. 7.

CBI's first break came from a union member who put the finger on Mulligan and other union leaders. According to witnesses, Mulligan, a former New York laborer, had started off by haranguing those at weekly council meetings for their lack of aggressiveness as organizers. He proposed "stronger methods like we use in the East"—and within weeks came that first 1968 fire. And, as finally confessed by Paul Welch, vice president of the lathers' international, Mulligan was even able to recruit him for arson incident No. 10. Welch relates how he drove Mulligan to the arson site in a suburb of Denver, where Mulligan left a can of gasoline. "I've carried a heavy burden of guilt ever since," Welch explains today. "I was drunk. I was petrified. Mulligan said, 'This is nothing new. There's nothing to worry about.'"

Indeed, at the time there seemed nothing about which the unions need worry. In February 1972, a new epidemic of arson began. Although 14 union people were ordered before a statewide blue-ribbon grand jury for questioning about the fires, union attorneys engineered long legal delays, and there were no arrests.

Fueling the Flames. Now, big fire crowded upon big fire. One wiped out five buildings in what had been planned as a 214-family project. Insurance loss: $400,000. A $450,000 burnout came next. Then, on a single day, two blazes that totaled $1.1 million occurred.

The CBI was hard pressed to stay abreast. Night after night, agents had to race from Denver to construction-project fires all over the state, consulting arson experts, smelling, testing, questioning, checking. Sometimes fake phone tips would send everybody through night-long stakeouts waiting for arsonists who were striking elsewhere. "We *can't* quit," MacIvor said. "Something new has been added to these fires. We've got to track down what it is."

The fact is that additional impetus to the building trades' organizing efforts had begun to surface. Leon W. Greene, fifth-district overseer for the United Brotherhood of Carpenters and Joiners, was in Denver in early 1972 talking to the Building Trades Council. "If you can't organize this town, we will do it for you," he was quoted as saying. Later in the year, the Carpenters members were not limiting their activities to pep talks. Edward L. Urioste, another visiting representative of Carpenters headquarters in Washington, was accompanying local organizers in their pre-fire conversations with victims-to-be.

Mulligan, however, was still front man, though he couldn't personally start the fires now. The CBI was watching him too closely. But the job was being done, and for pay. The hat would be passed at council meetings after such remarks as "Boys, we need some extra cash for our special organizing campaign."

By the fall of 1972, however, opposition to Mulligan's blatant methods was rising within the council. To take the heat off, the Northern Colorado Building and Construction Trades Council was abolished. Then, with a charter from the AFL-CIO, the members re-established themselves as a council with jurisdiction over the entire state and its 25,000 union building men. Mulligan was moved to an innocuous outlying job, but arson still increased.

Arson damages for 1972 totaled $2.1 million; for 1973, more than $2.7 million. The year's highlight was at Durango, where a 2:45 a.m. fire caused $600,000 worth of damage on an apartment job. When the CBI began looking for the union representatives who had been demanding daily that the job "go union," they had vanished.

Reward offers as high as $40,000 for information about the arson epidemic failed to turn up a single claimant. "Let's try a new approach," Whiteside said to his CBI colleagues.

Method Acting. Whiteside had profiles assembled on all unionists under investigation for the hat-passing. Their strengths and weaknesses were catalogued, and the CBI then selected one man as its target: "Let's reach Mulligan through one of those business agents who attended his hat-passing meetings."

For this step, they brought in CBI agent Kenneth P. Brown, all 400 pounds of him. Despite his innocent, apple-cheeked face, in 17 years as an undercover agent (first in California, then with the CBI, lately working on narcotics cases), he had helped to send so many crooks to prison that he had lost count.

Around this improbable lawman

the CBI wrote and rehearsed a show that opened one Friday afternoon to a crowded Denver tavern. Enter Kenneth Brown, bearded now, posing as a young hood—cocky because of the protection afforded him by the Mafia and by his father, a retired big-time gambler in California. Soon Brown was setting up drinks for everybody at the bar.

After a while, he shuffled over to a table where William F. Swanson, gun-barrel-tough business agent of Denver's cement masons, held court. Brown brashly shoved himself into the chair next to Swanson, who pulled a knife and pressed it against Brown's stomach. His voice dropped to a cold whisper: "Fat man, I'm going to let the air out of you." The CBI actor laughed and said, "I got a bigger knife. Use mine." And he waved what looked like a small bayonet in his challenger's face.

After that, the pair settled down to companionable drinking and talking. They got together frequently thereafter, and Brown was talkative—about his Mafia connections and how he was cleaning up in a variety of ways. The most lucrative of these was the stolen-airplanes racket. "I like you, Bill," Brown said. "I might be able to cut you in on something good." In a few days, he said, his underlings were to deliver $120,000 to him in a Denver hotel room, his due from the last airplane sale. Maybe Swanson would like to be there?

The next act, on November 5, 1974, saw Whiteside come to Brown's room masquerading as a Mafia captain, along with agent Donald Shepherd posing as the pilot who delivered the hot planes. As always, Brown was wired for sound. The agents opened a suitcase full of $100 bills borrowed from the government for show. Swanson was bug-eyed.

"Bill, count the money for me, will you, baby?" Brown said. When the tally showed the cash to be $40,000 short, Brown blew up, saying he'd been cheated. There was angry talk about teaching the double-crosser a lesson.

"He's got a bar," said Brown. "What I'd like to do is blow it up."

"*Burn* it up!" broke in Swanson.

Brown gleamed with appreciation and told Swanson that if he could help collect the missing $40,000 by burning the bar, the union man could keep half the take. With that, Swanson began to spill everything. "I'll get hold of the man. We've done business before."

Hard Evidence. To lure Mulligan, Brown dangled before Swanson an arson job every month to extract cash from people who had welshed on gambling debts to his mythical gambler-father. But, first, Brown wanted to be assured of the dependability of Swanson's firebug.

So Swanson sought to assure. He drove around Denver with Brown, identifying fire sites. "Tony," he emphasized, was responsible for all that damage. Here was what Brown had been angling for—at last. "Is Tony Italian?" he asked cautiously. "No, he's Irish—Tony Mulligan, from

New York. He's the one who brought us a lot of ideas."

Swanson related that he was in touch with Tony, and that Tony had sent a man to Denver to discuss Brown's developing fire assignments. On getting the final word on an assignment, he would set a timing device at the scene, and probably be flying back to his home base before the fire even started. Nobody, not even Swanson, would know when or how the job would be done, and payment would be made to parties unknown to Swanson.

"It's safer that way," said Swanson. "Tony doesn't want to become involved in anything whatsoever."

Tony was, however, already involved because of the recordings of Swanson's conversations with Brown. And the CBI had prevailed on the state attorney general to appoint Richard T. Spriggs, a former chief of a federal strike force against organized crime, and Robert K. Swanson, a young assistant district attorney, as special prosecutors to reconvene the grand jury on June 20, 1973. In 1974, at the end of the grand jury's term, indictments were handed down. At separate trials, William Swanson was found guilty of conspiracy to commit arson and Tony Mulligan of two counts of arson and conspiracy to commit arson.

Chain of Command. But the CBI wasn't through. What about the man, or organization, who set off the fires on order? Who was he, or who were they? Though not on the scale of the Colorado crimes, there had been burnings and bombings of construction jobs in recent years in several states, including neighboring Arizona, Kansas and New Mexico.

New Mexico! Union representatives from there were known to have come into Colorado to help persuade contractors to hire only union workers. And wasn't New Mexico one of the states policed by Ed Urioste, the Carpenters International visitor who called on arson victims-to-be in Denver? The CBI decided to look for a connection.

Brown was hurried off to Albuquerque, masquerading this time as a Sicilian interested in obtaining licenses that would enable his Mafia family back East to dominate the liquor business in Albuquerque. He and his "cousin" (Whiteside) cultivated Gary Briggs, chief business agent for New Mexico's sheetmetal workers union, and, through him, finally found a "man who can help you." The man turned out to be Urioste, who promptly offered to use his political influence to set up the Mafia in the booze business if he could be a silent partner.

"Can you handle the heavy stuff if we want it?" Brown asked. "Like burning down a certain bar so the insurance could be used to put up a better building?"

"There's no problem there—that damn thing would come down tomorrow if you want it down," Urioste replied. He began pouring out information about his interstate operations in terror and how his perfectionists worked. "I sent one guy up to northern California. He drove 600 miles, blew up three separate projects, and was on a plane back here that night."

Brown told Urioste that his "family's" purchase of a Denver shopping center was being delayed by a prospective seller, and that Brown wanted to send him a message to coöperate—or else. Urioste said that he had the explosives for such a job. As for the actual blasting, he would "handle it from here."

Five days later, Urioste loaded 100 sticks of dynamite and 50 pounds of dynamite powder aboard a CBI plane which Brown passed off as "family-owned," while two more "cousins" looked on. Then Urioste climbed in, too, unaware that everything he had said had been taped.

When they reached Denver, Urioste showed Brown and Whiteside how he would change an alarm clock into a timing device to explode his dynamite as much as 12 hours after it was placed. They promptly took Urioste into custody. And, last December, he pleaded guilty to illegal possession of explosives.

Long Way to Go. The feat of the CBI and its special prosecutors in cracking the country's worst arson sequence after federal agencies gave up or shied away must stand as a monument to what local authorities can do. But there is a long way still to go. For it is virtually impossible that Urioste could command a ring which, by his own admission, has been sending terrorists into other states—an action which would require at least coöperation from other union bosses—without this fact being known to those higher up in the AFL-CIO. Isn't it time to find out how far these conspiracies reach?

This is the responsibility of the U.S. Department of Justice, of other federal law-enforcement agencies, and of Congress. None can now bow out with the excuse that it lacks evidence with which to begin. The CBI, the special prosecutors and the Denver district attorney journeyed to Washington last summer and presented the interstate case they had worked up, complete with tapes, to the U.S. Attorney General. Included was the grand jury's request that the federal government carry on where Colorado had to leave off.

Six months later, the Justice Department would say only that "certain aspects are under consideration." May we see *action*, please?

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Mr. LARSON. Thank you.

Well, I have tried to touch on the concerns that you voiced throughout the hearing, so without prolonging my part of this, I would like to submit to any questions you have.

Senator MATHIAS. I will reserve my questions until the other members of this nonbusiness panel have testified.

Mr. LARSON. We have heard from the nonbusiness portion. Now we will hear from the business community, and I certainly commend them for their support. We are glad to have them.

Senator MATHIAS. Next on my list is Mr. Ross.

STATEMENT OF ALAN G. ROSS, ASSOCIATED BUILDERS & CONTRACTORS, INC., ACCOMPANIED BY RICHARD MARKEY, SPECIAL LEGAL COUNSEL

Mr. ROSS. Thank you, Mr. Chairman. My name is Alan G. Ross. I am an attorney with the firm of Wickens, Herzer & Panza, which represents the Northern Ohio Chapter of Associated Builders & Contractors. I am here today on behalf of the national office of Associated Builders & Contractors, referred to as ABC, along with Richard Markey, special counsel for ABC.

ABC is a construction management association representing over 17,000 contractors, suppliers, and associates who support the merit shop philosophy of awarding construction contracts to the lowest responsible bidder.

ABC appreciates the opportunity to appear before you today to discuss the issue of violent and extortionate activity which all too frequently occurs during the course of legitimate labor-management disputes. I would like to focus particular attention on the inadequacies of the Federal antiextortion statutes in dealing with this problem.

As currently construed by the U.S. Supreme Court in the *Enmons* decision, the Hobbs Act makes lawful the use of force or violence by labor organizations when such labor organizations are attempting to achieve legitimate labor ends. Based upon the difficulty of local law enforcement officials to control mob violence at construction sites, and the local State courts' inability to enforce orders for injunctive relief, it is respectfully submitted that the Hobbs Act should be amended so as to provide a Federal criminal law that would make it unlawful for a labor organization to use force or violence in order to achieve its end.

By not affording such protection, contractors have often been forced to literally work in a jungle without effective protection.

Congress has enacted numerous statutes that give Federal agencies and the courts the authority to regulate labor violence. In 1947 Congress extended the jurisdiction of the National Labor Relations Board to include the prosecution of unfair labor practices, as well as employer unfair labor practices, through the enactment of the Taft-Hartley amendments to the National Labor Relations Act. Section 8(b)(1)(A) of those amendments gives the NLRB the power to regulate union violence that interferes with the right of workers to refrain from engaging in union activity.

The NLRB has prosecuted unions under section 8(b)(1)(A) if the employer whose employees are being interfered with is engaged in interstate commerce. Of course, the NLRB remedy for labor violence is administrative and not punitive in nature. The NLRB cannot impose any criminal penalties or fines on unions guilty of labor violence.

Further, the National Labor Relations Act would not, for instance, find a violation of section 8(b)(1)(A) of the act if a union official beat up the president of a company in the course of a labor dispute unless it occurred in the presence of bargaining unit employees and had the effect of influencing their decision to engage in or refrain from engaging in union activity. Company officials who have supervisory status are generally excluded from the protection of the National Labor Relations Act, including protection from personal injury at the hands of union-directed violence.

Federal jurisdiction over labor violence can also be found in the Travel Act and the RICO Act, which make unlawful certain crimes, such as extortion, bribery, and arson, if these crimes are engaged in or affect interstate commerce. In fact, the RICO Act specifically names unions as enterprises that the act has jurisdiction over. However, the Travel Act and the RICO Act carve out a very narrow exemption to the general immunity given to unions for violence by the *Enmons* decision. To my knowledge, the Travel Act and the RICO Act are used to prosecute unions only when arson or explosives are integrated into the union's labor activity.

Notwithstanding the use of arson or explosives, it appears that unions can engage in any other violent means to carryout its labor goals because of *Enmons*.

Senator MATHIAS. Mr. Ross, I might interrupt you to say that in the interest of conserving time for you, that was one of the questions I did not propound orally to the Justice Department, but I am propounding it in writing to the Department and I would be glad to share their answer with you.

Mr. ROSS. Thank you very much.

For the purpose of this presentation, because we are here on behalf of Associated Builders & Contractors, Inc., I would like to focus on construction site situations. They are a bit different in context than other situations; and after focusing on construction site situations, detail a particular instance in which I was involved in representation of an ABC member.

Starting first with the general context, when bidding work, general contractors, depending upon the complexity of the work involved, solicit bids from various subcontractors. Once the contract is awarded and performance is commenced, one may find numerous subcontractors on a jobsite at one time.

Typically, the manner in which problems with labor organizations arise on the jobsite is when a particular subcontractor does not have a collective-bargaining agreement with a particular labor organization. At first, the labor organization seeking recognition engages in peaceful persuasion.

In accordance with the National Labor Relations Act, an employer is not required to recognize and bargain with a labor organization unless the labor organization represents a majority of its employees, and then only if a valid petition for an election is filed with the NLRB and such labor organization is successful in a board-conducted election.

However, if the labor organization does not obtain recognition from the employer, short of organizing the employer's employees and filing a petition with the Board in order to "achieve its legitimate labor ends," the labor organization must put pressure upon the subcontractor in some manner. Typically, the only means by which the labor organization can achieve its ends is to unlawfully enmesh other contractors then working on the job in the dispute.

Essentially, the course of conduct pursued by the labor organization is to place a picket on the jobsite and thereby, through various unlawful means in violation of the National Labor Relations Act, cause the complete cessation of work at the jobsite. At that point, the subcontractor involved may file unfair labor practice charges with the National Labor Relations Board and/or file a complaint in the State court for injunctive relief to merely limit the number of pickets.

Unfortunately, those two remedies are often inadequate and cannot be readily obtained. A recent situation in Toledo, Ohio, demonstrates the inadequacy of the current State and Federal remedies. H. K. Johnson Corp. is a general contractor based in Trenton, Mich. In early 1981 Johnson successfully bid upon and was awarded a contract for construction of a preengineered building that was to be used as a distribution center for Snap-On Tools in Toledo, Ohio.

Shortly after Johnson commenced construction at the jobsite in Toledo, in March of 1981 a business agent for the Ironworkers Union contacted H. K. Johnson and demanded that it recognize the Ironworkers Union and sign an agreement covering those persons performing iron work on the building. This initial demand was repeated several days later. In both instances H. K. Johnson Corp. informed the business agent from the Ironworkers Union that it would not recognize the union or execute a union agreement.

Of course, the Ironworkers Union could have spoken with Johnson's employees and attempted to convince them that they should be members of the union and filed a petition for an election with the NLRB upon presenting an adequate showing of interest. No attempt was made to organize Johnson's employees.

Several days after the second demand for recognition, business agents from nine different trade unions in the Toledo area came to the jobsite and informed the job superintendent for H. K. Johnson that they would not let the job go nonunion and that before H. K. Johnson finished the job, they would all end up in court and it was going to cost everybody a lot of money.

In response to the above statement, H. K. Johnson Corp. immediately posted no trespassing signs around the job, hoping that this would be a deterrent to business agents or other union members from coming on the jobsite and harassing employees. However, their efforts proved to be of no avail.

On March 23, 1981, while Johnson was building forms for pouring concrete piers, cars began to appear on the streets around the jobsite. Two men who said they were from the Ironworkers Union came on the job and told the superintendent that they would appreciate it if they would quit work and go back to Michigan.

After conferencing, the Johnson employees decided not to comply with the Ironworkers request and remained on the job. They believed they had a right to work and earn a living, whether or not they chose to be members of a labor organization.

Shortly thereafter approximately 50 men massed in front of the job and began to approach the jobsite. The jobsite superintendent pointed to the no trespassing signs around the job and was told by the men approaching the job that those signs meant nothing to them. Recognized in the group of men were business agents from several of the building trades union. As the men stormed on the job, they demolished all forms that had been constructed and damaged a bulldozer and other equipment then on the jobsite.

The next day, in the presence of a police officer from the Toledo Police Department, business agents from the Ironworkers Union & Bricklayers Union again asked Johnson if the company would sign a union contract. They also inquired about the names of all other subcontractors that would be working on the job and whether or not they had union agreements. It was again indicated that the company was not interested in signing a union agreement and would not disclose the names of any of its subcontractors.

After the conversation seemed complete, the police officer informed the contractor that he believed things could get nasty when matters of this nature were not worked out between business and labor.

After the onslaught of the jobsite mentioned above, the employees and subcontractors of Johnson found it necessary to gather as a group at a nearby gas station and go to the job in a group each morning. On April 2, 1981 the employees were gathered at the gas station at or around 7 a.m. At that time there were in excess of 100 union men massed around the jobsite.

The Toledo police had been summoned and met the employees of Johnson with six police cruisers in order to escort them onto the jobsite. The police informed them that they would escort them on the jobsite but that they would not stay. They told Johnson's employees and the subcontractors present that if they had any problems, all they would have to do would be to call the police on the telephone and they would be escorted off the jobsite. The police were informed there was no telephone at the jobsite.

Thus, in the face of over 100 pickets surrounding the jobsite and without any action proposed to be taken by the police to disperse the crowd, the employees decided not to go to work that day. That day the jobsite was again stormed, apparently in retaliation against Johnson for using a nonunion plumber. Not only was all of the plumbing work torn out of the ground, but masonry block was broken, concrete reinforced piers were damaged, paint was poured on various items and other supplies around the jobsite were damaged.

A policeman from the Toledo Police Department watched the devastation in progress and apparently made no call to the police department in order to curb the violence. The Toledo Police Department is also unionized.

Through the next several days 25 to 100 pickets ringed the jobsite during working hours. Practically speaking, it was impossible for Johnson or any of its subcontractors to perform any work.

On April 8, 1981, Johnson retained counsel in Toledo, Ohio, and filed a complaint and request for temporary restraining order in the State court, which was granted and issued on April 9, 1981. That order was issued against the various Toledo building trades unions.

Two days later, on Saturday, April 11, 1981, despite the issuance of a temporary restraining order limiting the number of pickets at the jobsite, in excess of 100 pickets again surrounded the jobsite. This time, however, the pickets were allegedly picketing on behalf of the Teamsters Union. Again, the Toledo police were summoned to the jobsite and this time responded with not only squad cars but paddy wagons.

After making several arrests, Johnson and his employees were able to gain access to the jobsite. However, the police could not control the mob. Three of the picketers approached Mr. Johnson and advised him that he had better get the Michigan State Police to get him home from Ohio, while another indicated that there was no way he would make it alive to the Ohio line.

As soon as Johnson's employees began working, the pickets began pressing toward the jobsite. The captain of the Toledo police, then present, indicated he could not control the pickets, and insisted that Johnson pull off the job. Again, this incident occurred after a State court injunction had issued.

After April 11, 1981, Johnson was forced to engage around-the-clock security. Beginning Monday, April 13, 1981, and through April 24, 1981, despite the issuance of a State court temporary restraining order limiting the number of pickets, there was often in excess of 25 pickets at the jobsite.

On April 25, 1981, after containing the security guard present, more than 50 union members again stormed the jobsite and did extensive damage to the structure.

Finally, realizing that the State court injunction was of little or no use because of the inability of the Toledo police to enforce the injunction, or unwillingness to enforce the injunction, Johnson filed unfair labor practice charges with the NLRB on April 27, 1981. Although the labor board found merit to the charges, the process of obtaining injunctive relief proved to be rather slow. During the course of the NLRB investigation, the judge in the State court action attempted to resolve the dispute by suggesting that H. K. Johnson accede to the union's demands by soliciting bids from contractors in signed agreement with the various labor organizations.

As those forced negotiations proceeded over a period of weeks, the labor organizations insisted they were attempting to work out a settlement, and the judge insisted that H. K. Johnson participate in those meaningless negotiations without further intervention from the NLRB.

In accordance with the judge's direction, Johnson did solicit bids from union subcontractors. All of the bids received were above the budget for the project. As such, Johnson rejected the bids and negotiations broke off.

During this period of time it was rumored that the unions would again engage in acts of violence at the jobsite. The source of this information was the Toledo police. Realizing that the Toledo police had been unable to enforce the injunction, the office of the Governor of the State of Ohio was contacted for assistance. However, such assistance was not possible. It was explained that before the State could consider offering assistance, a request must be made by the mayor of the city of Toledo for the same. It was determined that contact with the city on this issue would be futile. Such requests had been made in the past without success on the basis that a rumor was not sufficient grounds to authorize intervention.

It turned out not to be just a rumor. On May 27, 1981, in the face of a State court injunction and pending NLRB charges, in excess of 50 unionmen stormed the job again and did substantial damage to the structure, knocking down interior partitions, destroying or damaging parts of the exterior of the building, and damaging supplies and equipment. After this further damage was done to the jobsite, the unions agreed with the NLRB to a consent injunction order in the U.S. district court. However, the NLRB did not obtain signature of counsel for the building trades unions on that order until June 19, 1981.

In addition, in order to resolve the matter, the National Labor Relations Board entered into a settlement agreement with the 11 building trades unions and the Teamsters local union involved. The settlement agreements all contained nonadmissions clauses.

Thus, after devastating the jobsite several times, the NLRB entered into a settlement agreement with the labor organizations which provided that execution of the agreement did not constitute an admission that any of the labor organizations had violated the National Labor Relations Act. The remedy for violation of the National Labor Relations Act consisted of the labor orgnizations posting notices stating they would not violate the National Labor Relations Act in certain respects.

As unfortunate as the above incident was, the real tragedy was that the union members responsible for the violence escaped criminal prosecution. Clearly, the outrageous, illegal activities the union engaged in constituted extortion. Clearly, these activities violated all boundaries of accepted labor practices developed since the passage of the National Labor Relations Act. But according to the Supreme Court, the above action was not a violation of the Federal extortion statutes, since the unions were pursuing legitimate labor activities, an organizing attempt, at the time the violence occurred.

ABC advocates——

Senator Mathias. Mr. Ross, I do not want to interrupt you but I am jealous of Mr. Supica's time, too, and I have no control over that clock. The powers of the Chair are limited in those respects, and as I indicated earlier, we have a cloture vote approaching.

So to the extent that you can summarize briefly, I think it would be helpful to Mr. Supica.

Mr. Ross. We will. Let me conclude by stating that ABC advocates legislative changes which would restore the effectiveness of the Hobbs Act in prosecuting serious cases of extortion and violence when they occur in the course of a legitimate labor dispute, and therefore endorses the bill that is at issue before this subcommittee.

Finally, in response to remarks made by Mr. Specter as to whether there are any specific incidents of local authorities being unable to control the situation, local courts being unable to deal with the situation, I think this one example, and certainly we could bring up many more, but this one example graphically illustrates the inability, ineffectiveness and perhaps unwillingness of local authorities to become involved in labor-management disputes of this nature.

We thank you very much.

Senator MATHIAS. Thank you, Mr. Ross. I appreciate your cooperation.

STATEMENT OF JIM W. SUPICA, PRESIDENT, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ACCOMPANIED BY BRIAN DEERY

Mr. SUPICA. We thank you, Mr. Chairman. My name is Jim Supica and I am president of the United Construction Co. of Overland Park, Kans. With me today is Brian Deery, a member of the Associated General Contractors of America's staff.

I am here today representing the members of our association in my capacity as chairman of the AGC's National Crime Prevention Committee. The Associated General Contractors of America is pleased to be given this opportunity to present our views on S. 613. I am also proud to represent management's side in this matter, which is a vital concern of ours today.

The Associated General Contractors of America represents 8,500 general contractors who put in place over 80 percent of American construction projects. While representing management, Mr. Chairman, I cannot emphasize strongly enough that we do represent, and we take the full responsibility for the well-being of our 3.5 million construction workmen and workwomen who help us build America today.

A total of 1,977 members from my own chapter of the Associated General Contractors of America of Missouri and the Heavy Constructors Association of the Greater Kansas City Area were victims of massive property damage, followed by the expiration of a collective-bargaining agreement. Many incidents were reported and included acid being poured in the engines of heavy construction equipment, with resulting damages estimated to exceed $1 million, sugar poured in concrete, clubs and other weapons being used on workmen and machines, employees being shot at, and the list can go on and on.

I must make it clear there is no proof that these acts were perpetrated by labor officials or by their agents to influence the negotiations. However, the contractors who suffered the greatest losses were members of the labor negotiating committee. The president of the chapter who served as the leader of these negotiations had the engines of 14 heavy construction machines damaged by sulfuric acid, with losses estimated by the State highway patrol to be in excess of one-half of a million dollars.

The point is there is no proof linking these acts to labor negotiations or proving them unrelated to the negotiations, because there was little investigation. There was little investigation because the local sheriff, city, State police are reluctant to become involved in these matters. However, the FBI and other Federal officials lack jurisdiction.

The result is that a contractor can be placed in a position where he must accept labor demands or be harassed by threats backed up by sabotage and violence from which he is given no protection.

AGC views S. 613 as the perfect opportunity for Congress to reassess its original intent in passing the Hobbs Act, and to overturn the *Enmons* decision. Extortion is a crime no matter who commits it and no matter what the objective is, and it should be treated as such.

However, the voices against overturning *Enmons* have raised this issue to a highly emotional plane by claiming that such an approach would subject the picket line hothead who loses his temper or throws a punch to a Federal extortion conviction. This is nonsense, and it has been shown to be such in the past.

The crime we are talking about here is not the picket line scuffles, but the major acts of violence which are deliberately planned to browbeat management into a labor agreement.

In S. 613, Senator Thurmond has continued this protection for the individual who is not able to control his emotions. A person cannot be convicted of committing extortion unless all the elements of that crime are present. There must be the intent to undertake violent actions deliberately to influence management's decision. In addition, property damage must exceed $2,500 before it would fall under the extortion category.

Another emotional argument put forth is that this legislation would limit labor's right to strike. Nothing could be further from the truth. S. 613 lists all of the sections of the United States Code which guarantee labor various rights, and specifically states that there are no intentions to repeal or modify any of these sections of the law. This argument is totally without substance.

Many have also argued that this is a States rights issue because State and local authorities have always been responsible for enforcing laws of this kind of activity. Labor has been so successful in obtaining Federal preemption of labor laws that the suggested extortion language is not necessary. States have been excluded from jurisdiction in labor matters for a long time and this philosophy has been extended into the law enforcement area. The States seem to have the attitude that labor matters should be handled by the Federal Government, and there are therefore reluctant to become involved. Because of this attitude, it is necessary to return to Federal law enforcement officials the tools necessary for providing protection during a labor dispute.

AGC feels that enactment of S. 613 will accomplish the long-sought-after goals for which the Hobbs Act was intended. This bill does not create any new felony under the Federal law, but merely restates in a clear way the intent of the Hobbs Act.

In closing, Mr. Chairman, I would like to comment. Hearing Mr. Gold's testimony, I thoroughly agree that violence should not be permitted on the construction site under any conditions. I also agree that speedy prosecution should be brought to bear against those who commit these illegal acts. And I also agree with Mr. Gold that violence and sabotage by either union or management should be punishable under S. 613.

I would be glad to respond to any questions, sir.

Senator **Mathias**. Gentlemen, first let me advise you that Senator Biden has been detained on the floor in connection with the cloture vote which is upcoming. He is the ranking minority member of this committee and is managing the bill for the authorization of the Department of Justice, which is involved in that debate. So he sends his regrets to you that he is not here to participate in this colloquy.

Let me turn first to Mr. Supica. You just stated that S. 613 does not create any new felony under Federal law, but merely restates in a clear way the intent of the Hobbs Act. Now that seems to be in some conflict with the Department of Justice testimony, which refers to portions of the bill which create new crimes consisting of affecting interstate or foreign commerce by inflicting or threatening to inflict death or serious bodily injury on any person, or by willfully damaging to the extent of $2,500 or more any property, including real property used for business purposes.

Now, the Department would seem to say these are new crimes, to which it objects. Does that affect your endorsement of the bill in any way?

Mr. **Supica**. The bill makes sense to me, sir, as a nonattorney. I would have to let the lawyers respond to the legal verbiage of the bill.

Senator **Mathias**. Now let me ask Mr. Larson what his reaction is to the Department of Justice objections to the provisions in S. 613 which would make it a Federal crime to interfere with interstate commerce by inflicting death or serious bodily injury.

Mr. **Larson**. Again I will have to take the same position as my friend here, but——

Senator **Mathias**. Maybe we should go directly to Mr. Ross, then.

Mr. **Larson**. Let me make this comment on the Justice Department. I do not know what their position is, it has changed so fast. They submitted a statement 2 days ago which had been the subject of weeks and weeks of study and investigation. In fact, I believe you postponed the November 4 hearing because they were so furiously studying this matter that they needed the time.

Senator **Mathias**. That is correct.

Mr. **Larson**. So they finally came up with their position which was filed with your committee earlier this week. Then 2 days later they came up with a new statement. And Mr. Rose says he had never heard of any union violence. Well, if he has no record of any union violence, I do not consider their testimony at this point, until I can study it, I really cannot comment on it but I am perplexed at the way it was arrived at.

Senator **Mathias**. Just for the record, you are correct. The postponement was at the request of the Department of Justice. It was not at the instance of the Chair or other members of the committee.

Mr. **Larson**. We understood that, Mr. Chairman.

Senator **Mathias**. Would you like to comment briefly, Mr. Ross?

Mr. **Ross**. Yes. On behalf of the association, which specifically has a position on this, I am going to ask Mr. Markey to speak for ABC.

Mr. **Markey**. Senator, our feeling on S. 613 is we are most enthusiastic about those portions of the bill that specifically deal with labor extortion in the context of the *Enmons* decision. We understand the Justice Department's concern about certain portions of the proposed amendments that would create new crimes, and we would be willing to work with Senator Thurmond's staff and the Justice Department in addressing those concerns, if in fact certain portions of those amendments would create an unbearable administrative burden on the Justice Department to prosecute certain sorts of property damage in interstate commerce.

But I will reiterate that we enthusiastically support that portion of the amendment in S. 613 that deals with labor extortion as it directly deals with the *Enmons* decision and as it would reverse the *Enmons* decision.

Senator MATHIAS. One of the subjects on which I have been critical of my colleagues in Congress, and I take my full share of the blame, is that we do not always enact legislation which is sufficiently clear. Now that is not altogether bad. That makes business for lawyers. It creates a demand for more judges. It employs more senior lawyers as judges and makes room for young lawyers. But in an effort to improve our performance here I think we need to be very precise.

The language of the bill, at the top of page 2, refers to willfully damaging to the extent of $2,500 or more any property, including real property, used for business purposes. And I am wondering if any of you have a feeling that that term business property intended to include property owned by the labor community as well as by the management side. Would business property be equally so defined?

Mr. LARSON. Mr. Chairman, that may be a point that needs clarification, as you have raised it there.

Senator MATHIAS. Your statement, which I accept at the opening, that you are not a business panel, really leads me to speculate on what do we mean by this word business.

Mr. LARSON. Our interest is in seeing completely evenhanded application of the penalties in this law.

Senator MATHIAS. If we are going to be evenhanded, perhaps we ought to look at that particular phrase.

Now let me turn to a question that I asked Mr. Gold. I recalled for him that in the last Congress we had S. 1722, with which you are familiar, and to which you have made reference, and in particular, the provision barring the prosecution of acts of violence that occurred during a legitimate labor dispute except where the actor intended to force acceptance of the union demands by inflicting death or serious bodily injury on another, and where there is the certification of the Attorney General.

Now, the effect of that bar to prosecution was to leave the *Enmons* decision in force in any minor case, or would have been to do that had that ultimately been enacted into law.

How would you feel about a similar bar to prosecution in this instance?

Mr. LARSON. Mr. Chairman, the language that you refer to there in our opinion falls very far short of making this bill evenhanded and to make it carry out the intentions of the drafters of the bill in the first place. It would probably be just a little bit better than nothing, but it certainly would be inadequate in our judgment.

Mr. **Supica**. If I could comment, Mr. Chairman, we certainly think that S. 1722 fell short by not including property damages in its coverage. During 1977–79 and 1980, the Associated General Contractors of America's Crime Prevention Committee conducted a survey on theft of equipment as well as sabotage and vandalism to equipment and plants. The figures that we have for general contractors only, which is approximately 60,000 in America today, the sabotage during a 3-year period, from 1978 to 1979 and 1980, is approximately $114 million. And when we are talking about those kinds of dollars, sir, we certainly ought to consider property as part of this bill.

Senator **Mathias**. How would you respond to the Department's willingness to bar minor violence?

Mr. **Ross**. No problem from the standpoint of ABC. And if we may also comment on the bill the other two gentlemen have spoken of, of course we also from ABC feel that with the omission of property damage from the bill, it is lacking. But then in terms of an evaluation of the adequacy of local law enforcement, although in concept that may sound like a great idea, something that should be included in the legislation, from a practical standpoint, by the time such a determination could be made, perhaps the substantial deterrent effect of Federal criminal legislation would evaporate. The violence has already occurred. And that is what we think the current bill at least serves to do.

There is no wall that can be built around the States, so to speak, by protecting their own interests in holding out that of course we engage in effective law enforcement. That is part of the political problem in this entire area, of the States with the types of political pressures that they get from the unions currently, of course the State is going to say, at the behest perhaps in some instances of the unions, we are doing a great job.

Senator **Mathias**. What is the feeling of this panel as far as the *Thordarson* case is concerned? Does it lessen the need for a legislative reversal?

Mr. **Larson**. Mr. Chairman, I commented briefly on that. We feel quite the opposite, that it illustrates the urgency of action on behalf of S. 613 because the U.S. attorney who drafted that case very clearly reached down and tried to use the only available instruments, and carefully constructed a case around the obvious disability provided in the *Enmons* decision, and was barely upheld even so against a union argument which they are making very widely, that it was the intent of *Enmons* to not only do what it said but also to reach out to all Federal criminal law and give union officials immunity from any kind of prosecution under Federal criminal law.

Senator **Mathias**. That contention was rejected.

Mr. **Larson**. Yes, Mr. Chairman, it was rejected, but in a 2-to-1 ruling, and the trial court judge went the other way and then one of the appellate court judges did. So this is far from settled, clear law. I think in fact that division indicates the need for Congress making itself very clear on this point.

Senator **Mathias**. I think that is an interesting comment.

Mr. **Ross**. May we also comment on that?

Senator **Mathias**. Yes, briefly.

Mr. Ross. Very briefly, of course *Thordarson* again concerned itself with explosives and arson. H. K. Johnson, a case we described here today, did not involve arson or explosives, and it is on that basis that that case was really decided, and the Hobbs Act was used as a defense, as it were. There were no specific Hobbs Act indictments in that case, so again, like the earlier bill, it doesn't cover property damage.

Senator MATHIAS. Well, I think that is a useful observation, one that we will have to look at. I think that is one of the kinds of analyses the committee will be making.

Now in connection with analyses, and so that we can reduce the conflict of testimony here, the conflict of evidence as much as possible, it is my understanding that the Bureau of Alcohol, Tobacco and Firearms statistics, under the category of labor-related damage or injury, does not distinguish between those caused by labor or those caused by management, assuming that there are such in either category. We simply have one aggregate figure. Is that your understanding?

Mr. LARSON. That is my understanding. I do not have any information to the contrary. It is a labor dispute. The responsibility was not fixed either way.

Senator MATHIAS. Well, that is the state of my understanding but I am subject to correction or amendment if you have any further information.

Now second, do you know whether any of the explosions included in the Bureau's statistics have been subject to either State or Federal prosecution?

Mr. LARSON. We do not have that information. Actually, we regard those figures and that report as just one of the many indicators that there is a problem here, just like the publicly reported incidents of violence.

Senator MATHIAS. Do the statistics that you have very generously offered us the right to peruse include any detail of that sort?

Mr. LARSON. Some would include much more detail than others. It depends on what is on the public record. Some have prosecutions at the local level. Some, there is no responsibility fixed. These are all of the reported incidents in connection with a labor dispute.

Senator MATHIAS. Well, it may be of some interest for us to take a look and to see, for example, whether there had been prosecutions brought under say 18 U.S.C. 844 which would have some bearing on the question.

Mr. SUPICA. Mr. Chairman, one reason why we do not necessarily have documentation of all these various instances, the normal trade practice is once you have reached an area of collective-bargaining agreement, in most cases all sins are forgiven by both parties. And these things go undocumented.

Senator MATHIAS. Just go back to work.

Mr. SUPICA. Absolutely. This is what we have to cease from doing because once that effort is put forth in order to conclude a collective-bargaining agreement, and if those means are used in order to arrive at a final collective-bargaining agreement, it is an encouragement for those same acts to be used at the next negotiating session.

Mr. Larson. That is a very important point. I am glad the business viewpoint was represented because that is an insight that we could not have given you, but it certainly makes sense.

Senator Mathias. Let me lay you under the same injunction that I have the other witnesses. As we review the testimony today and look at some of the exhibits that have been offered, we will undoubtedly have some further questions which we will propound to you in writing, and we will keep the record open so that your responses can be included as part of the record, and offer you the opportunity that if upon reflection you want to add some further statement, we will hold the record open for that, too.

Also, at this point I would like to insert in the record a statement from the chairman of the full committee, Senator Thurmond, and letters and additional statements from several parties relating to this issue.

Thank you all very much.

[The material referred to earlier and the prepared statements of Messrs. Larson, Ross, and Supica follow:]

STATEMENT OF SENATOR STROM THURMOND IN REFERENCE TO S. 613, HOBBS ACT AMENDMENTS

Mr. Chairman, I commend the Chairman of the Subcommittee on Criminal Law for conducting the hearing today on S. 613—a bill designed to deal with the use of extortion and serious violence to obstruct, delay, or affect commerce or the movement of goods in commerce. I introduced this bill early in this Congress as a vehicle separate from the criminal code legislation to consider the impact of violence on our economy and commercial institutions.

In reviewing some of the recent comments on the scope of the bill from both proponents and opponents, I wish to emphasize two basic points:

First, I am concerned about the disruption of commerce by violence, whether it may come from labor, management, or neither. As I have said before, "I would, if it were in my power to do so, put an absolute stop without any compromise to the disruption of commerce in this country by intimidation and violence, whatever its source." I accept the principle that the applicable penalty should be evenhanded and apply equally to all parties to a commerce disrupting legitimate dispute in which one or more of the parties resorts to serious violence as a method of resolving such a dispute.

Second, I have no desire to interject the Federal Government into relatively minor physical altercations and vandalism that may spontaneously occur in the course of picket line or other similar activity common to labor disputes. Those disputes involve high stakes. Tempers and emotions can temporarily get out of hand. In such instances, the disruption of commerce realistically attributable to the altercation is insignificant compared to the overall coercive effect of the legitimate strike and accompanying economic coercion. However, when violence becomes a significant or overriding factor in settling commerce-related disputes, some governmental entity should step in to remedy the situation. In my judgment, if the State or local government fails to provide a remedy in such cases, the Federal Government should be empowered to act. That is the basis for my introduction of S. 613.

Again let me thank the chairman of the subcommittee for proceeding with this hearing. I am confident the subcommittee can draft statutory language to ensure we have an evenhanded bill that covers only the conduct legitimately within the Federal interest.

Lynn R. Williams
International Secretary

Frank S. McKee
International Treasurer

Lloyd McBride
International President

Joseph Odorcich
International Vice President
(Administration)

Leon Lynch
International Vice President
(Human Affairs)

United Steelworkers of America
AFL-CIO-CLC

FIVE GATEWAY CENTER, PITTSBURGH, PA. 15222

Phone: (412) 562-2400

August 14, 1981

TO ALL UNITED STATES SENATORS

AUG 20 1981

Dear Senator Thurmond:

The right of workers to organize into unions has been recognized by our government since the passage of the Wagner Act in 1936. Despite the number of years since the enactment of this historic piece of legislation, there are a few who would like to turn back the tide of history and deny working people their hard won rights.

Organized labor is alarmed and outraged by an effort to legalize a double standard in labor relations. I refer you to the bills, S. 613 and H.R. 450, introduced by Senator Strom Thurmond (R-VA) and Representative Kenneth Robinson (R-VA) respectively. These bills propose the alteration of the Hobbs Act so as to apply it to picket line altercations. Enacted in 1936 and amended in 1950, the Hobbs Act defined instances in which robbery and extortion were to be considered federal crimes. In 1973 the Supreme Court ruled (in U.S. v. Enmons) that the Hobbs Act did not apply to minor acts of violence or threats of violence which occur during legitimate strikes for improved wages, fringe benefits and working conditions.

Further, not all acts of picket line violence are exempt from federal prosecution. A recent U.S. Court of Appeals decision (U.S. v. Thordarson, Ninth Circuit) makes it clear that the federal government has sufficient authority to prosecute serious acts of violence, such as arson.

So then why is this new legislation being proposed? If a picket line melee occurred in which employer agents or strike breakers threw the first punch, their act of violence would be a state crime or assualt, which carries far less stringent penalties. On the other hand, the striker who may have been provoked to anger by such action and who retaliated would be subject to the same state laws plus federal prosecution for extortion. That striker and/or a union official would be subject to fines of up to $10,000 and/or prison terms of up to 20 years. This one sided enforcement of law is contrary to the guiding principle embodied in all other federal labor laws which assures government neutrality and even-handedness in their enforcement. Thus, the proponents of these bills are seeking to give employers an unfair advantage during strike situations.

Be assured that our members are paying close attention to this crucial issue.

I am sure that you will give this matter full consideration as it is an issue of extreme importance to millions of Americans.

Senator, please oppose S. 613.

Sincerely yours,

Lloyd McBride
International President

Lynn R. Williams
International Secretary

Frank S. McKee
International Treasurer

Joseph Odorcich
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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

October 8, 1981

Mr. Lloyd McBride, International President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pennsylvania 15222

Dear Mr. McBride:

I appreciate very much receiving your letter of August 14, 1981, expressing your views on behalf of the United Steelworkers of America concerning Federal legislation I introduced (S. 613) to prohibit any person from using extortion or serious violence to obstruct, delay, or affect commerce or the movement of any article or commodity in commerce. I apologize for the delay in this response, but I thought it important to give your position the personal time and attention it deserved.

Your letter raises a number of issues that deserve a response.

In the first instance, your appeal to me to oppose the bill overlooks our unambiguous disagreement on the appropriate Federal involvement in, and response to, the serious disruption of commerce by violence.

Secondly, your letter is misleading in at least two respects. It implies that the major thrust of the legislation is to reach minor spontaneous "picket line altercations", citing the Enmons case as holding that the Hobbs Act did not apply to "minor acts of violence or threats of violence which occur during legitimate strikes. . .". As you know, the Enmons case involved extremely serious non-picket line violence and enthroned an irrational rule in Federal extortion law that would, for example, permit the kidnapping and execution of a company president to obtain, in the words of your letter, improved wages, fringe benefits, and working conditions during a legitimate strike. If Federal jurisdiction over commerce interrupting extortion by "minor" violence or threats of such violence is objectionable, I would be more than willing to accept--I would offer--an amendment to S. 613 excluding such conduct from the scope of the measure.

Finally, the implication in your letter that the bill is not even-handed is simply not true. It applies to any person who obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, extortion, or serious violence to person or property. The bill would not cover agents of either the employer or employee in a minor picket line melee provoked by anger because there is no extortionate intent involved. Moreover, it would cover agents of both the employer and employee who obstruct commerce by serious personal injury or property destruction. If an imbalance occurs under the bill, it is inherent in the nature of labor disputes and the nature of robbery and extortion as property-taking offenses. That is precisely the reason S. 613 contains new provisions to cover non-property-taking serious violence to person and property that disrupts commerce.

I have no desire to discriminate. I would, if it were in my power to do so, put an absolute stop without any compromise to the disruption of commerce in this country by intimidation and violence, whatever its source. If the bill is deficient in meeting employer violence, I welcome suggestions on how to cure any such defect.

Again, let me thank you for providing me with the opportunity to express my views on this extremely important subject. To promote better understanding of this issue, I wonder if it might not be possible for you to publish your letter and my response together in the United Steelworkers newsletter to the membership and I will reciprocate by placing them in the Congressional Record.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jw

cc: All Senators
All Representatives

(From the Harrisburg Patriot, November 25, 1981)

Crimes Committed in the Name of Labor

By JAMES J. KILPATRICK

"DEAR BROTHERS and Sisters," began the letter from Lloyd McBride, "I need your help to stop a cold-blooded attack on the rights of working families and a direct attack on our union."

Mr. McBride, president of the United Steelworkers of America, AFL-CIO, was talking about a bill now pending in the Senate to amend the Hobbs Act of 1945. The act deals with acts of violence or extortion committed in interstate commerce. In what is known as the Enmons case of 1973, the Supreme Court held that the act did not apply to acts of violence or extortion committed in the course of legitimate collective bargaining.

The court's 1973 opinion is important to an understanding of the amendments now pending in Congress. The Enmons case involved some serious acts of violence committed by members of the International Brotherhood of Electrical Workers during a strike 10 years ago against the Gulf States Utilities Co. Speaking through Justice Stewart, five members of the court agreed that, while the acts doubtless were in violation of state law, they were not in violation of federal law. The Hobbs Act, said Stewart, simply "does not proscribe the use of force to achieve legitimate collective bargaining demands."

IT SEEMED a bizarre decision to the court's four dissenting members. They protested that shooting and sabotage in the course of a strike "literally fit the definition of extortion." In their view, to blow up a substation as a device for obtaining higher wages is indeed a crime under the Hobbs Act.

Now, to return to Mr. McBride's recent letter to his union members. The pending bill, he said, would "take away rights that have been specifically protected by the Supreme Court." The bill would deny "fair treatment for union members who express their views on a picket line." The sponsors "want to make it easy to put union members like you and me in federal prison when we exercise our rights by walking a picket line." If enacted, the bill would turn back labor's gains by 50 years. The bill would restore an era when men, women and children were beaten – even killed -- for standing up for the right to join a union. The bill is one-sided: It would provide heavy penalties for union members, but modest penalties for bosses or strikebreakers.

The McBride letter runs on to four pages of such balderdash. The pending bill, S. 613, says that "whoever" inflicts or threatens to inflict "death or serious bodily injury" on any person in the course of interstate commerce may be prosecuted in federal courts. For willful damage to property amounting to $2,500 or more, fines up to $100,000 or prison terms up to 10 years could be imposed. Punishments would increase in proportion to the damage done. Death as a result of bodily injury could mean life imprisonment.

Plainly, the amended bill would apply only to serious violence on either side of a picket line. It would not apply to minor altercations, fistfights or to property damage below $2,500. Such offenses would continue to be matters for the state courts. The idea is to make serious violence in a labor dispute a federal offense. Even Mr. McBride does not contend that the rights of working families embrace a right to dynamite a substation. Why then is the AFL-CIO so opposed to the pending bill?

I CAN TELL you why. This past August in Illinois, union coal miners destroyed three miles of fence and burned equipment valued at $70,000. Last March in Missouri, union electricians abducted the wife of a non-union electrician, beat her and dumped her in an alley. Both crimes involved the use of force and intimidation "to achieve legitimate collective bargaining demands," and under the Hobbs Act as it stands today, neither crime could be pursued in a federal court.

That's what the controversy is all about. I am all for states' rights, but abduction by union goons as part of a labor dispute strikes me as a matter for the FBI. This is how the law should have worked all along.

PREPARED STATEMENT OF THE NATIONAL LABOR-MANAGEMENT FOUNDATION

The National Labor-Management Foundation has offices in Washington, D.C. and Louisville, Kentucky and represents business and industrial firms in the 50 states. It was chartered in Illinois in 1947 as a non-partisan, non-profit organization to provide research, education and information to develop clearer understanding and better communication among employees, employers, and the general public in labor-management relations.

The Foundation studies and supports federal legislation it believes will help bring about improved labor-management relations and better working conditions. In this regard, the Foundation wishes to present it's views on S.613, a bill introduced by Senator Strom Thurmond to amend the Hobbs Act (18 USC 1951).

The issue presented is quite clear. It goes to the question of whether labor unions should continue to enjoy virtual immunity from the reach of the Hobbs Act, a key statute for the application of federal criminal justice in this country.

The legislative history of the Hobbs Act indicates that Congress fully intended the Act to apply to labor unions. However in 1973, the U.S. Supreme Court, by a five to four vote, held in United States v. Enmons, 410 U.S. 396, that the Act did not reach extortionate conduct by labor union officials in the course of a legitimate collective bargaining dispute for legitimate objectives.

This Subcommittee can now play an important role to overturn the Enmons decision and make it clear that federal criminal justice in this country is to be applied equally to all persons and organizations.

There is no legitimate governmental purpose in singling out labor union officials to live as a privileged group beyond the reach of federal criminal laws. As Congressman Hobbs said of his bill, "this bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card."

Opponents of S.613 argue that state law remedies are available and should be applied to labor union violence. It is no surprise that labor union officials who lobby long and hard for many federal standards are opposed to them when it comes to having to comply themselves. But more importantly, discrimination in the application of federal laws should be recognized as a threat to the equal administration of justice in violation of our constitutional principles. When Congress enacts federal extortion laws they should be applied equally to all persons and organizations or not be enacted at all. There is no logic in exempting union violence from a federal extortion statute of general application.

To conclude, the National Labor-Management Foundation strongly urges members of the Criminal Law Subcommittee to approve S.613 in order to reverse the effect of the Enmons ruling, and require union officials to bear responsibility for extortion, just like all other Americans.

FARM LABOR RESEARCH COMMITTEE
Seeking a Sound Labor Policy for American Agriculture
1901 L STREET, N.W., SUITE 711 • WASHINGTON, D.C. 20036 • TELEPHONE (202) 296-0078

December 9, 1981

The Honorable Charles M. Mathias
Chairman, Subcommittee on Criminal Law
Senate Judiciary Committee
162 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

The Farm Labor Research Committee, a non-profit, non-partisan organization of farmers, workers and concern citizens around the nation, strongly supports S.613 which would make labor union violence subject to federal anti-extortion law. We respectfully request that this letter be made a part of the hearing record on this bill.

S.613 is needed to restore fairness to the nation's legal system, which has granted union officials such special powers under labor law that they are virtually immune from civil and criminal laws. The Supreme Court decision in the 1973 Enmons case gave union officials a legal license to trample the civil rights of workers and their employers by exempting them from prosecution under the Hobbs Act while pursuing "legitimate" union demands.

The problem of union violence is especially bad in agriculture, with its isolated work sites and relatively mobile work force. During recent strikes in California, reports of destruction of property and intimidation of individual employees documented continuing violence which local law enforcement officials were virtually powerless to prevent.

A report on hearings into the problem by a special committee of the California Senate concluded that "many problems of violence have been prevalent in the fields. Open conflict between persons, secretive attacks on persons and property and actual and implied threats of virtually all kinds have occurred against persons and property."

The committee then listed some of the categories of violence: "arson, assault with a deadly weapon (pipe, heavy metal or wood object, etc.),.. trespassing, assault without weapon, vandalism..."

Union officials have testifed before you that existing federal and state laws are sufficient to protect the civil rights of workers and employers in labor disputes. Senator Mathias, we believe the opposite is true.

The courts have ruled, in effect, that labor law supersedes civil and criminal law. And labor law encourages violence by organizing employees and employers into warring factions.

Violence and abuse of individual civil rights will continue unless and until the Hobbs Act is amended to make union officials subject to the same prohibitions on extortionate behavior as all other citizens. S.613 will do the job, and we urge its passage.

Sincerely,

Betsy Houston

Betsy Houston
Executive Director

STATEMENT OF ROBERT A. GEORGINE, PRESIDENT OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO, TO THE CRIMINAL LAWS SUBCOMMITTEE OF THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE CONCERNING S.613 TO AMEND THE ANTI-RACKETEERING ACT.

This statement concerning Senate Bill S.613 is submitted by the Building and Construction Trades Department of the AFL-CIO on behalf of itself and its 15 affiliated national and international unions which represent over four million workers. The Building and Construction Trades Department strongly objects to S.613, which proposes to convert even minor misconduct which may occur in the course of a lawful economic strike into the federal crime of extortion. S.613 would accomplish this objective by amending the Anti-Racketeering Act, 18 U.S.C. section 1951, commonly known as the Hobbs Act. Currently, the Hobbs Act does not include such incidents within its definition of extortion.

Our opposition to S.613 is not based on support of the use of violence and threats as a means of achieving otherwise lawful collective bargaining objectives. We do not condone violence in any form. Our position is based instead, on the fact that such misconduct is already well regulated by state and federal law and application of the crime of extortion to such activity is wholly unnecessary. The Building and Construction Trades Department regards S.613 simply as an effort to inhibit the federally protected right of workers to participate in concerted activities.

The legislation under consideration by the Committee today, S. 613, is yet another in the long line of proposals which have been offered during the last eight years to amend the Hobbs Act. Like its predecessors, S.613 is ill-advised and represents an unnecessary intrusion of federal criminal jurisdiction into an area already well policed by other federal and state laws.

The Hobbs Act penalizes by up to twenty years in prison whoever "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by...extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property infurtherance of a plan or purpose to do anything in violation of this section." The term "extortion" is defined in the Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

The Federal Government attempted to use the Hobbs Act in 1971 against members and officials of the International Brotherhood of Electrical Workers who were indicted for conspiring to use threats of violence and the fear of economic injury to secure an agreement from an employer to pay higher wages.

The Government contended that the Hobbs Act covered all attempts by union members and officials, through force or violence, to obtain the property of an employer engaged in interstate commerce. The Government also argued that the language of the Hobbs Act nowhere suggests a special immunity for union members and officials who use force and violence to obtain higher wages and better working conditions, simply because these could also be obtained through lawful collective bargaining.

The Supreme Court, in a five-to-four decision with Justice Blackmun concurring, held in United States v. Enmons, 410 U.S. 396 (1973), that the language of the Hobbs Act proscribes interference with interstate commerce by extortion, but that the use of violence to obtain higher wages is not within the statute's definition of extortion. The Court observed that "extortion" is defined in the Hobbs Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear," and reasoned that the word "wrongful" modifies the entire definition of extortion and not just the proscribed means. The Court's rationale was that it is always wrongful to use force, violence, or fear and, therefore, that the use of that term was also intended to modify the other phrase in the definition which refers to "obtaining the property of another."

Consequently, the Court refused to accept the Government's broad concept of extortion--the wrongful use of force to obtain even legitimate union demands of higher wages. Justice Stewart, writing for the Court, observed:

> "The Government's broad concept of extortion--the 'wrongful' use of force to obtain even the legitimate union demands of higher wages--is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine."

Subsequent judicial decisions have consistently recognized that "the effect of Enmons was to remove from the reach of federal criminal law the use of coercive tactics to obtain increased wages, but with the caveat that the prosecutor's hand would be stayed only when the payment is gained in furtherance of legitimate labor objectives. Thus, the Enmons decision has not exempted labor officials and union members from all federal prosecution under the Hobbs Act merely because their alleged unlawful activity occurred in the context of a labor dispute.

In United States v. Daley, 564 F.2d 645 (2nd Cir. 1977), cert. denied, 435 U.S. 933 (1978), the principal officer of a Teamsters union was convicted of a Hobbs Act violation because he requested and received at no cost six hundred tons of stone for his personal use from an employer then involved in collective bargaining with the defendant's union. The defendant union official also arranged to have two members of the local union provide their trucks to load and haul the stone after regular working hours. Neither of the drivers was compensated by the defendant union official for this work. Similarly, in United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), cert. denied, 424 U.S. 955 (1976), a clergyman who was authorized to represent certain employees of a retail store in a labor dispute was convicted of violating the Hobbs Act for receiving payment from the employer in return for removing a picket line around the employer's store. Each of these defendants was convicted of violating the Hobbs Act because he obtained a personal payoff through the use of coercive tactics.

Similarly, the courts have refused to recognize the Enmons decision as a general exemption of violent misconduct from prosecution under other federal criminal statutes. In 1980, a federal trial court dismissed an indictment against three union officials accused of burning two trucks owned by an employer involved in a labor dispute with their union. The court concluded in United States v. Thordarson, 487 F. Supp. 991 (C.D. Cal. 19890), that the Enmons ruling is not limited to extortion cases. Accordingly, the court ruled that the effect of Enmons was to remove from the reach of all federal criminal law the use of violence, threats and fear to obtain higher wages. Thus, the court dismissed the indictment even though it was based on a number of federal criminal statutes, but not the Hobbs Act.

Recently, the United States Court of Appeals in San Francisco reversed the trial court and held, instead, that the Enmons holding is limited to cases involving alleged extortion and does not apply to prosecutions under other federal statutes prohibiting use of explosives to damage vehicles used in interstate commerce, 18 U.S.C. section 844(i); travel in interstate commerce to commit arson, 18 U.S.C. section 1952 or conspiracy to conduct affairs of an enterprise through a pattern of racketeering activity, 18 U.S.C. section 1961(d). United States v. Thordarson, 646 F.2d 1323 (9th Cir. 1981).

The appeals court reasoned that the federal criminal laws under which the defendants in Thordarson were indicated are written in general terms and prohibit specific kinds of violent activity without regard to the status or ultimate objectives of the people who engage in the prohibited activity. Thus, the court concluded that the Enmons ruling is not applicable inasmuch as none of the Thordarson defendants were accused of extortion under the Hobbs Act. A federal court in Ohio reached the same conclusion three months earlier in United States v. Chambers, 515 F.Supp. 1 (N.D. Ohio, 1981), when it refused to exempt a union member from prosecution for destroying vehicles owned by an employer.

The Court of Appeals did state in a footnote, however, that the Enmons interpretation of the crime of extortion in the Hobbs Act should be extended to the extortion provisions in other federal statutes in order to insure uniformity and consistency. The court observed, nevertheless, that none of the defendants in Thordarson were accused of violating the extortion provisions of those statutes and, therefore, it was inappropriate to consider the scope of their extortion provisions in this case, Thordarson, 646 F.2d at 1328, n.9.

Despite the courts' consistently narrow interpretation of the Enmons decision in these cases and others, each version of the recodification of the federal criminal laws considered by the Judiciary Committee has included a definition of the crime of extortion which, to some extent, would have overruled the Enmons case. S.613 is the first legislative proposal designed exclusively to reverse the Enmons decision, but its roots are in the various criminal code bills considered since 1973.

In the context of revising the federal criminal code, members of the Judiciary Committee have repeatedly struggled with the definition of "extortion," in an effort to achieve a compromise between the competing interests who want to preserve the Enmons interpretation and those who wish to have it reversed. These struggles are described in an article which appears at 72 Northwestern University School of Law's Journal of Criminal Law and Criminology, 499, 510-519 (1981), copies of which have been provided to each member of the subcommittee.

For many members of this subcommittee, the issue presented by S.613 may seem to be whether commission of major acts or threats of violence such as murder, kidnaping, arson and/or destruction of real and personal property by means of an explosive should be exempt from federal prosecution under the Hobbs Act simply because such violent activity occurs during the course of a legitimate labor dispute. That is not the issue, however.

The Enmons interpretation of extortion under the Hobbs Act does not give carte blanche to hooligans and racketeers to threaten, destroy, or injure others under the protective shield of a labor dispute. Those persons should be and are, prosecuted under state and federal law for whatever substantive crimes they commit.

For instance, several union officials and members were convicted of using explosives to damage and destroy vehicles and other personal and real property pursuant to 18 U.S.C. section 844(i) even though such acts occurred in the context of a labor dispute in United States v. Parker, 586 F.2d 422 (5th Cir. 1978). Similarly, members of a striking union were convicted of possession and use of a prohibited firearm (a bomb) to blow up trucks owned by a company doing business with their employer. Langel v. United States, 451 F.2d 957 (8th Cir. 1971).

In each of these cases, major acts of violence were successfully prosecuted under federal criminal laws which prohibit the specific acts committed without resorting to reliance upon the Hobbs Act. Thus, it is clear that there are federal statutes already on the books which expressly prohibit the gross acts and threats of violence which many supporters of S.613 claim must be addressed by redefining the crime of extortion in the Hobbs Act.

The issue is not, therefore, whether major acts of violence should be punished, but whether the federal crime of extortion should be expanded to include violence committed during a legitimate labor dispute. If it is unnecessary to amend the Hobbs Act in order to permit federal prosecution of major acts and threats of violence which occur in the course of labor disputes, what then is the purpose of S.613? It appears that supporters of this bill are actually trying to give federal prosecutors a broad mandate to intervene in labor disputes, and to hold the threat of felony indictments over the head of union participants in labor disputes.

The underlying concern of the Supreme Court in the Enmons case was that application of a federal extortion statute in the context of the collective bargaining process would transform minor acts of labor violence punishable by state law into federal felonies, thus placing the Federal Government in the business of policing the routine conduct of strike activity.

S. 613 would not only extend federal criminal jurisdiction into virtually every labor-management dispute and place federal prosecutors in the untenable position of taking sides in disputes, but would also disrupt the delicate balance already created by Congress in the labor-management relations area. Moreover, the risk of a federal indictment for extortion because of some minor labor-related misconduct would have a substantial chilling effect upon the exercise of workers' federally protected right to engage in concerted activities to improve their wages, hours and working conditions.

Congress, in addition to prohibiting specific criminal misconduct, has also legislated that the use of violence in the course of collective bargaining to coerce an employer is an unfair labor practice under the National Labor Relations Act, 29 U.S.C. Sec. 151, *et seq*. (1976). Thus, if a union or its agents engage in violent activities the National Labor Relations Board (NLRB) is authorized to proceed against the labor organization and the individuals involved. *See,* *NLRB* v. *Union Nacional de Trabajadores*, 540 F.2d 1 (1976), *cert.* *denied*, 429 U.S. 1039 (1977); *NLRB* v. *Imparato Stevedoring Corp.*, 250 F.2d 297 (3d Cir. 1957); *NLRB* v. *Furriers Joint Council*, 224 F.2d 78 (2d Cir. 1955); *Laura Modes Co*. 144 N.L.R.B. 1592 (1963). Remedies available to the NLRB include the authority to issue orders to cease and desist from the specific unfair labor practices, require the offending union top post copies of a notice of the Board's determination at all union offices and meeting places, and even mail copies to all employees of the company involved, and publish copies of newspapers of general circulation in the locality where the violence occurred. *NLRB* v. *Union Nacional de Trabajadores*, 540 F.2d at 11-12; *Texas Gulf Sulphur Co*. v. *NLRB*, 463 F.2d 778, 779 (5th Cir. 1972); *J.P. Stevens & Co*. v. *NLRB*, 461 F.2d 490, 495 (4th Cir. 1972); *J.P. Stevens & Co*. v. *NLRB*, 417 F.2d 533, 538-40 (5th Cijr. 1969); Alexander Stafford Corp., 118 N.L.R.B. 79, 82 (1957), enf'd sub nom, International Ass'n of Heat & Frost Insulators v. NLRB, 254 F.2d 955 (D.C. Cir. 1958). Where the coercive misconduct is especially serious, the Board can even decertify the union as the exclusive bargaining representative of the affected employer's employees. NLRB v. Union Nacional de Trabajadores, 540 F.2d at 13. See also, NLRB v. David Buttrick Co., 361 F.2d 300 (1st Cir. 1966); International Bhd. of Teamsters, Local 671, 199 N.L.R.B. 994 (1972); Hughes Tool Co., 104 N.L.R.B. 318 (1953).

In the interim, the Board has the power, upon issuance of an unfair labor practice complaint against a union or individual members, to seek an injunction against further violent misconduct. National Labor Relations Act. section 10(j), 29 U.S.C. section 160(j) (1976).

The National Labor Relations Act also provides that any finding by the Board of an unfair labor practice involving coercive misconduct is enforceable by the United States courts of appeals, sections 10(c) and (f), 29 U.S.C. sections 160(e) and (f) (1976). The Board can also seek civil and criminal contempt sanctions against respondents who refuse to comply with the courts' enforcement orders. See, e.g., NLRB v. Teamsters Local 327, 592 F.2d 921 (6th Cir. 1979).

In addition to the remedies provided by federal law, a number of remedies, both civil and criminal, are available under state law to victims of misconduct in the course of a labor dispute. State and local law enforcement agencies have the principal responsibility for defining and prosecuting crimes. . Accordingly, expansion of the crime of extortion in the Hobbs Act to apply to labor-related disputes would be an unprecedented intrusion into matters traditionally reserved to the states. Traditionally, Congress, for good reason, has been relunctant to expand federal criminal jurisdiction into criminal activities which states and local law enforcement agencies are adequately handling.

In fact, there is no evidence that current state and federal criminal statutes are inadequate to police labor-related violence. For instance, the annual reports of the Federal Bureau of Investigation do not mention labor-related violence as a separate category of criminal activity, and the National Labor Relations Board does not tabulate which unfair labor practice cases involve violence. This indicates that labor-related violence is hardly a widespread or chronic problem which requires expansion of federal criminal jurisdiction.

There are also several civil remedies available under state law to victims of violence and coercion which occurs during labor disputes. State courts may enjoin violence and threatening activity, as well as award compensatory and punitive damages for the consequences of such actions. United Automobile Workers v. Anderson, 351 U.S. 959 (1956), aff'g per curiam, 245 Minn. 274, 72 N.W.2d 81 (1955); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942); United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954); Solo Cup Co. v. International Bhd. of Pulp, Sulphite & Paper Mill Workers, 237 Md. 611, 205 A.2d 213 (1964), cert. denied, 380 U.S. 976 (1965). In sum, there is no need to provide the Federal Government with an additional means of prosecuting such activity because an ample arsenal of weapons is already available to deter violence in the course of labor disputes. Available evidence does not indicate that there is a compelling need to expand the federal extortion statute to include violent misconduct in the course of legitimate labor disputes.

Furthermore, extension of the Hobbs Act to reach strike violence could overextend limited federal police resources. There are simply not enough federal law enforcement officers to begin to police labor-related violence throughout the United States. Nor should the added burden upon an overworked federal court system be overlooked. Most importantly, however, is the impact which inadequate federal police resources would have on the evenhanded administration of justice. For if federal police resources are inadequate to monitor all labor-related violence, the inevitable consequence will be that federal law will be applied haphazardly, erratically, or invidiously. Enforcement will vary from situation to situation and from community to community, dependent upon the accident of the preoccupation, zeal, interest, or worse, of the local United States Attorney. That environment breeds arbitrary and erratic arrests and convictions. No statute is acceptable which unnecessarily commits matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Nonetheless, this is exactly what S.613 would cause.

S.613 would also create a gross double standard which would subject union members who become involved in labor-related violence to prosecution for extortion, but not employers and their agents who often instigate the violence in the first place.

For example, Great Coastal Express, Inc., a Virginia trucking company, was awarded damages of $967,000 against the International Brotherhood of Teamsters because a federal trial court found the union caused the destruction of trucks and other company property during a labor dispute which occurred ten years ago. The trial court, after conducting another hearing in 1979, found that several former Great Coastal employees had given false testimony during the original trial in 1971, At least one former employee testified in the 1979 hearing that he was told by his supervisors to shoot at his own truck, throw bricks, puncture tires, and give false testimony to the federal jury concerning those responsible for the property damage allegedly caused by the

Teamsters. The appeals court remanded the case for retrial.

This case confirms what organized labor has long known, which is that much of the violence connected with labor disputes is manufactured by employers in an effort to discredit the labor movement. Noretheless, such unlawful activity, even if proven to be caused by employers and their agents, would not be punished under S.613. The reason is simple. Under no circumstances would the purpose of such violence be to obtain the property of the union or its members, as required by S.613. As a result, regardless of the apparent intention of its drafters to apply the crime of extortion to both sides of a labor dispute, as a practical matter, S.613 would only be used to prosecute union members and not employers and their agents.

This is expecially important because, as I indicated earlier, violent misconduct by workers is often a reaction to employer provocation. The purpose of such provocative activity is either to discredit the workers' demands to break their morale, or to create a disorderly situation which requires the armed intervention of state or local law enforcement. S.613 would not prohibit such activity. In fact, S.613 would encourage provocative activities by employers because violent reactions by workers would be dealt with in an extremely severe and one-sided manner under its terms, but not the provocative actions which actually caused the violence.

In addition to the important policy considerations which support our opposition to S.613, this bill is simply inconsistent with basic principles of criminal law. Extortion, at common law, under most state criminal statutes, and the current Hobbs Act, requires allegation and proof that there is an intent to misappropriate the property of another. This critical element of the crime of extortion is embraced in the Hobbs Act in the words "obtaining property from another," and "induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." While the word "wrongful" in this definition literally precedes the description of the prohibited means, the Supreme Court ruled in the Enmons case that the concept of "wrongful" also attaches to the "obtaining of property from another."

S.613 would, however, eliminate the need to allege and prove a felonious intent to misappropriate the property of another in order to make out a prima facie case of extortion under federal law. Instead, section (b)(2) of S.613 would simply require an allegation that "actual or threatened force, violence, or fear thereof, or wrongful use of fear not involving force or violence, or under color of official right" was used to "obtain...property from another."

The proposed elimination of the word "wrongful" from the definition of extortion in S.613 would bring within its meaning all disputes concerning demands by workers and their unions to obtain higher wages and other monetary benefits from employers through collective bargaining. The Supreme Court held in Enmons that such demamds cannot be characterized as misappropriation of another's property with felonious intent. Of course, an employer who pays wages and other benefits in exchange for work performed for him is not having his property misappropriated. What he gives is the quid pro quo for what he gets.

An employer and a worker may disagree as to how much should be paid for the work. Violence by either party in the course of such a dispute is not a permissible means to break the deadlock between them. But such violence, if it occurs, is not extortionate because it is not aimed at misappropriating the property of the other party. Fixing terms of employment is simply not misappropriation of property.

Apparently, the draftsmen of S.613 recognized this proposition and simply side stepped it by eliminating the need to prove a felonious intent to misappropriate the property of another. S.613 provides, instead, that violence or the fear or threat of violence when used to obtain, but not misappropriate, the property of another, is, nevertheless, extortion.

Traditionally, the crime of extortion has been a larceny-type offense. It is not stealing to seek a collective bargaining agreement which provides for higher wages and other monetary benefits. Nonetheless, S.613 would alter the traditional character of extortion by eliminating the elements of felonious intent to misappropriate property of another simply to reach labor-related violence. This is, as a practical matter, unnecessary because there are ample federal, state and local laws, both criminal and civil, which are used to deal with the problem. Moreover, it is inadvisable as a matter of public policy, because the proposed expansion of federal jurisdiction is inconsistent with the National Labor Policy and the legitimate goal not to expand federal criminal jurisdiction absent a showing of compelling need.

What, then, is the purpose of S.613? It appears that its purpose is simply to harrass labor unions and the workers they represent and make them reluctant to exercise their right to participate in lawful concerted activities such as picket lines and striking. The labor movement has never encouraged or condoned violence as a means of achieving its objectives, and it does not condone it now. Nevertheless, it does sometimes occur in the emotionally-charged setting of picket lines and strike situations. Under S.613, all violence by strikers--but not by employers or their agents--no matter how minor, would be swept within the scope of the Hobbs Act including the worker who throws a punch on a picket line and the striker who deflates the tires on his employer's truck. All such activity would be subject to the same severe punishment.

The chilling effect on workers' protected right to participate in concerted activities which S.613 would have is unquestionable. For all these reasons, the Building and Construction Trades Department is opposed to S.613 and urges this Subcommittee to issue an unfavorable report concerning this unneeded, unwise and one-sided legislation.

United Electrical, Radio and Machine Workers of America
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UE RESPONSE TO RIGHT-TO-WORK

The statement of the National Right to Work Committee, at page 8, misrepresents events at the Wesco Electronics company plant in Greenfield, Massachusetts, beginning with the fact that the United Electrical, Radio & Machine Workers (UE) was the union at Wesco, not the International Brotherhood of Electrical Workers (IBEW).

BACKGROUND

Workers at this plant, almost all of them women, voted 56-47 for UE representation in December, 1976. The employer dragged out appeals to the National Labor Relations Board and the courts for over two years before being ordered to the bargaining table in 1979. Several months of negotiations proved fruitless, as the employer refused to make a reasonable offer to the workers, whose average wage was $3.40 per hour. Union members voted to strike in September, 1979.

After 15 weeks, the employer sought a court injunction to further restrict already limited union picketing rights. Finding the company with unclean hands - the company president had earlier run over two picketers with his automobile - the court instead ordered the company to enter into non-stop, good faith bargaining with the union.

An agreement was reached in the 20th week of the strike in February, 1980 - more than three years after the workers voted for union representation. Instead of the "merit system" and minimal benefits typical of this type of electronics shop, the breakthrough two-year contract provided a90¢ wage increase on the $3.40 base, company-paid health insurance, weekly sickness and accident pay, 11 holidays, job posting, layoffs and recall by seniority, and other standard union protections (but not, incidentally, a union shop, Right-to-Work's big bugaboo; some 75% of the workers joined the union voluntarily upon resumption of work).

Unfortunately, industrial relations have not been smooth since then. The NLRB has issued a new Unfair Labor Practice complaint against the company for refusal to bargain in good faith, and a Labor Board trial is scheduled for January.

THE R-T-W STATEMENT

The statement of the Right-to-Work Committee begins, as pointed out earlier, with an obvious error of fact as to the name of the union involved. Other facts are glossed over, twisted or omitted.

Mrs. DeLuzio was a union supporter during the organizing campaign and while the company was appealing the election. She quit work at Wesco, however, several months before the strike began, and took another job.

Shortly after the strike began, Mrs. DeLuzio - no longer a Wesco employee - called the company and asked for her job back in order to help break the strike. The reasons for her change in attitude toward the union involve personal relationships and events totally unconnected with union activity, so they will not be dwelt on here. At any rate, this is the context in which Mrs. DeLuzio "resumed work" at Wesco, as the R-T-W statement puts it.

Mrs. DeLuzio, assisted by R-T-W, has filed suit in Massachusetts state courts against the union and against individual union members, seeking millions of dollars in damages for "emotional distress." Representing her in this action is the company's own attorney.

The suit against the union was dismissed by the Massachusetts Superior Court. Mrs. DeLuzio and the company attorney have appealed to the Supreme Court of Massachusetts, and are waiting for their decision.

It is important to note that the most serious allegation in the R-T-W statement - namely, that Mrs. DeLuzio's daughter was hit by a rock - is completely absent from the complaint in the lawsuit. One would think that this most serious charge involving alleged violence against a person, levelled here at the Senate hearing, would head the list of complaints in the lawsuit.

CONCLUSION: NO NEED FOR S. 613

If anything, the events at Wesco Electronics bear out the position of the trade union movement on S. 613. Mrs. DeLuzio is getting her day in court as she pursues her suit for damages against the union through the Massachusetts judicial system. The union brought a criminal complaint against the company president for running over two strikers in his car; that complaint was dismissed by a local grand jury. Some other incidents of damaged cars involving both strikers and non-strikers (some 20 employees continued to work during the strike) were handled by local police and local courts under disturbing the peace or small claims proceedings, and in some cases payment for damages was ordered.

In short, what we have here is a fairly typical strike situation where a majority of low-paid workers are seeking to improve their sweatshop wages and conditions, and a minority is trying to break the strike. The employer has amply demonstrated an anti-union bias and a desire to get rid of the union, and personal animosities exist between strikers and non-strikers - sometimes, as can be expected in a small town, for reasons that have nothing to do with work or unions. There were minor incidents of property damage, but no allegation (until today, some two years later) of physical violence. This entire matter is best handled, and indeed was handled, right where it all took place, by state and local authorities and courts. There is no need to make a federal case out of these events.

AFL-CIO: THE TRUTH ABOUT INCIDENTS CITED IN TESTIMONY OF THE NATIONAL RIGHT TO WORK COMMITTEE BEFORE THE SENATE JUDICIARY CRIMINAL LAW SUBCOMMITTEE

Wesco Electrical Co.
Greenfield, MA
Anita DiLuzio

CHARGE: "Mrs. DiLuzio was dealt a lesson in terror by militants from the International Brotherhood of Electrical Workers Union."

FACT: The Right To Work Committee cannot get even the basic outlines of the case straight. The union involved is the International Union of Electrical, Radio and Machine Workers, not the IBEW. We might note that this is not the first time Right To Work has libeled a union in this manner. In their publication Free Choice, they told a story about problems with United Mine Workers Local 5089 in Wallace, Idaho. UMWA doesn't represent any miners in Wallace -- or in Idaho, for that matter.

CHARGE: "The DiLuzios found local authorities to be extremely reluctant to get involved."

FACT: Greenfield police on many occasions responded to calls from Wesco for protection of nonstrikers. "All calls we received we responded to as soon as humanly possible," said Greenfield Police Captain David Wood. On some occasions, as many as 25 officers monitored the picket line. Arrests were made, and union members made restitution to owners of damaged vehicles on at least three occasions.

CHARGE: "Mrs. DiLuzio returned home to find one of her daughters had been hit by a rock during a rock-and-bottle assault on the family home -- it took three frantic phone calls before the local police would even send a squad car."

FACT: Greenfield Police Captain Wood repeats that the department responded as soon as possible to this call. DiLuzio, with the backing of the Right To Work Committee and Wesco's attorney, filed a civil lawsuit against the IUE Local 274 and the International for trespass, assault, and intentional infliction of emotional distress, and this alleged incident is not even mentioned in their complaint.

Mary Helen Coal Company
Bellfry, KY

CHARGE: "Four drivers were shot."

FACT: Although four people were shot, the Right To Work Committee ignores the fact that one of those shot was a union picketer, Raymond H. Gannon, a member of Local 5737, District 30, of the United Mineworkers. As a result, Gannon was unable to work from April 22, 1981 until November 2, 1981. He suffered severe nerve damage in his arm and according to his wife, still cannot pick up a cup of coffee using that arm. Gannon was unarmed and believes that the driver of the second truck shot him.

CHARGE: When furnished the license numbers of three vehicles that carried the guns, they refused to conduct an investigation.

FACT: When Kentucky State Police Detective Robert Forsythe arrived at the scene of the shooting, he observed company people standing around the trucks, some of whom were wearing pistols as sidearms and one of whom had a shotgun. None of the pickets were observed to be armed. He was told by one of the company people that the pickets had thrown their weapons into a car bearing Ohio license plate number CJC 387 which allegedly had left the scene. A check on that license number was run by Alcohol, Tobacco and Firearms Agent McAllister but it was determined that the car was registered to the daughter of the Chief of Police, East Liverpool, Ohio. No other license numbers were provided.

The investigation is not concluded.

RUR Industries
North East, PA
Ron and Karen Yokum

CHARGE: "A Molotov cocktail was hurled at the side of the Yokum's home and burst into flames."

FACT: According to Steelworkers Local 9051 Rep. Jay Lever, the bomb was hurled from a passing car, and picketers ran across the street to the Yokum's home and put out the fire.

CHARGE: "Ron Yokum has been attacked by a man slinging a baseball bat at a window screen separating Mr. Yokum from his attacker, who was bashing in a window in the Yokum's home."

FACT: Three people were arrested in connection with this incident, according to local authorities. One was from New York and was not associated with the strike. Two await trial, the third was sent to jail and is paying restitution for damage to a vehicle.

CHARGE: "Even their three-year-old daughter has not escaped unscathed. At one point, a wine bottle was thrown at her which shattered, splattering glass onto her leg."

FACT: The individual arrested for this act was not a union member. When the complaint was filed, the description seemed to match a man already in jail for public drunkenness. He was positively identified as the person who threw the bottle.

CHARGE: "Repeated pleas for help from local law enforcement officials have proved to be of no avail."

FACT: North East Police have responded every time they have received a complaint. At least 25 arrests have been made of pickets and nonstriking employees. Numerous arrests have been made at the Yokum residence.

The Erie County Sheriffs Department also has responded on several occasions. Some violence may be attributed to the presence of hired security guards, which Chief Sheriff's Deputy Robert Michael referred to as "storm troopers." One such firm, which was not licensed to operate in Pennsylvania, was thrown out. These guards carried automatic weapons and converted a school bus into an armored vehicle for transport of nonstrikers across the picket line. RUR then brought in Nuckols Associates, a notorious union-busting security firm. Since Nuckols left on September 7, no incidents have occurred, according to Dever.

ADDITIONAL INFO: On August 27 at 1:00 a.m., 30 nonstrikers attacked the four pickets on duty. Three escaped; the fourth, Alex Lazar, was held down and beaten with a pipe. Nonstrikers attempted to break his arms. Two persons were arrested for rioting and assault, according to Dever. Sheriff's Deputy Michael confirms that a picket was injured; it was following this incident that he brought his entire department to the picket line.

National Rejectors, Inc.
Hot Springs, AK
Deanna Ussery

CHARGE: "Late one night Ussery's home was inundated by shotgun blasts that peppered the bed of her eight-year-old daughter. By a stroke of fortune, the little girl was away overnight."

FACT: During Ussery's Right-To-Work-backed lawsuit against the union, she testified that she does not know who fired into her house. There was no "stroke of fortune" involved; Ussery's daughter was living with her father. Ussery and the child's father were, at the time, waging a serious child custody battle. Noting that he believed that Ms. Ussery "presented a physical danger to the children," the judge granted custody to the father. Ussery charged the judge--a respected jurist--with being "bought off" by her ex-husband.

(See also Appendix C to AFL-CIO testimony for information regarding the National Rejectors case.)

J.T. Fritz and Sons
Lutherville, MD
Donald T. Fritz

CHARGE: "Fritz was attacked and viciously beaten."

FACT: The person named in connection with this incident in a civil suit against Local 16 was not a union member; he was a non-union employee working on permit. And according to the testimony in the suit, the "vicious beating" amounted to an exchange of words and a grabbing of Fritz by the collar. Fritz won his suit and was paid a fine by the union.

Amendments to the Hobbs Act under consideration by the Senate Judiciary Criminal Law Subcommittee would single out union members for prosecution under federal law providing harsh penalties now reserved for very serious crimes. These "worst-case" incidents cited in the testimony of the employer-financed Right To Work Committee prove that no federal intrusion on states' rights is necessary. State and local authorities have proven themselves fully capable of arresting and prosecuting those who break the law--whether or not the incidents are related to collective bargaining disputes.

PREPARED STATEMENT OF REED LARSON

Mr. Chairman, Members of the Committee, my name is Reed Larson, President of the National Right to Work Committee. The Committee is a single-purpose citizens' organization made up of approximately one and one-half million Americans banded together to oppose compulsory unionism.

Our organization's concern with compulsory unionism extends not only to the contractual form in which an employer agrees to fire employees who decline to pay dues to an unwanted union, but also to the imposition of unwanted union membership through violence or threats of violence. The latter has been aptly described as the "pick-handle closed shop." That, of course, is the subject to which we address ourselves today in connection with S. 613 and the effort to achieve equal application of the Hobbs Anti-Extortion Act to every citizen.

This bill, S. 613, will close a loophole in the Hobbs Act so union officials will be treated exactly like other Americans, and thus would be subject to prosecution for violence perpetrated in pursuit of extortionate objectives.

The words of Nobel Laureate Friedrich Von Hayek provide a sobering, but thoroughly realistic, backdrop for the examination of this issue. Dr. Hayek observed that the United States has reached "a state where labor unions have become uniquely privileged institutions to which the general rules of law do not apply. They [unions] have become the only instance in which governments signally fail in their prime function -- the prevention of coercion and violence."

Ironically, 13 years after Professor Hayek made that statement, the U.S. Supreme Court handed down its infamous Enmons decision, thus making a bad situation even worse.

Under present law, union officials -- and only union officials -- enjoy a wide array of special privileges and legal immunities available to no other group of Americans. Among all these privileges and immunities, none is so outrageous, and utterly indefensible, as that established by the Enmons decision -- the immunity from federal prosecution for violent acts of extortion perpetrated in pursuit of "legitimate union objectives."

In my testimony today, while covering the legal and technical aspects of the proposed amendment, I want to emphasize principles of equality and justice which are so brazenly violated by the present interpretation of the Hobbs Act and, more importantly, to outline its consequences in human terms.

While the seductive influence of power tends to corrupt almost any human who possesses it, the unchecked powers granted to union officials have given rise to corruption and violence on a grand scale. We have before us today, in S. 613, an opportunity to take one very important step in addressing that growing problem of union corruption and violence.

With the federally sanctioned power to extract compulsory dues and other special powers which the law grants to union officials, they are given the ability to keep most workers strictly in line. And having become accustomed to this position of supremacy, they seldom display reluctance to use any means -- including violence -- to control workers.

Even such a defender of union privilege as Archibald Cox noted this tendency when he wrote, some twenty years ago, "...there are many ways, legal as well as illegal, by which entrenched [union] officials can 'take care of' recalcitrant members."

Briefly, this is the situation: the Hobbs Act, 18

U.S.C. 1951, was enacted to protect those involved in interstate commerce from robbery and extortion committed by anyone -- including union officials and their agents. The bill was based, according to its author, on the principle "that crime is crime no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card."

In 1973, the U.S. Supreme Court in Enmons v. United States gutted federal standards of prosecution for extortion arising in labor disputes.

The crime of extortion, as you know, includes the obtaining of any money, property, or thing of value by any person, by means of force, fear, or threats. The technique of extortion is extremely useful to unscrupulous union officials in obtaining such demands as compulsory union shops, compulsory "agency" shops, compulsory union hiring halls, and irrevocable dues checkoff clauses.

Enmons has emboldened union officials to threaten and to commit felonies such as murder, manslaughter, maiming, arson, property destruction, explosives, or firearms offenses, etc., to obtain their "legitimate" demands. Through fear instilled by violence, union officials can -- and do -- demand and obtain from employers deals which require employees to pay money to an unwanted union in order to work.

University of South Carolina law professor Thomas R. Haggard summed it up, "...the prevailing view seems to be that criminality under federal law is as much a matter of the actor's status as it is of his conduct, and that the status of a labor union official is an especially privileged one in our society."

We believe that no one, regardless of his or her status, should be above the law.

Those who try to defend union officials' unique immunity to commit violence contend that the problem should be left entirely to local and state officials. Those apologists cannot explain why it is only union violence that should be left up to local officials, while all other violators of the Hobbs Act are subject to federal law.

The record is clear that local officials simply are not up to the job of dealing with violent acts of international unions. In the first place, such violence is often incited and masterminded by officials of international unions who escape across state lines before they can be apprehended or questioned. Furthermore, local government officials are frequently overawed by powerful union chiefs and extremely reluctant to antagonize these potentially dangerous political adversaries.

Local officials, with limited training and resources, often find themselves up against a pattern of violence orchestrated by professionals whose experience and resources are on a scale which overwhelms local law enforcement officials.

This results in de facto legal immunity for union officials. The victim's appeal to local police, city hall, or even state authorities often goes unheard for this reason.

This fear and frustration on the part of victimized workers compounds the problem. Workers know that union officials regularly get away with blatant acts of violence. Rightly assuming that union agents will probably escape justice once again, abused workers usually choose to drop the matter and nurse their wounds in silence. They know, as Archibald Cox observed, how effectively entrenched union officials can "'take care of' recalcitrant workers."

As a result, those few workers willing to speak out publicly against the abuse they suffer at the hands of entrenched union officials are the exceptional ones...the truly courageous ones.

Our researchers are daily adding to the accounts of compulsory union violence in our already-voluminous files. There are 188 recorded incidents for 1976. By 1981, that had risen to 449 acts of violence -- more than one a day.

However, AFL-CIO spokesmen would have us believe that union-inspired violence is limited to what they call "minor picket-line scuffles." In over 2,000 recorded cases of violent union conduct documented in our files, nearly 800 involved circumstances where picketing was not even taking place.

A compilation of these records has been assembled and will be made available both to the members of this committee and to the media.

A similarly grim story of union violence is available from the U.S. Bureau of Alcohol, Tobacco and Firearms (BATF). According to BATF, incidents of union violence by bombings alone accounted for some 3.7 million dollars in property damage between 1977 and 1979. The Bureau also reported that, in 1977, disputes involving organized labor were the number one motive for bombings, and that in 1977 and 1978, the same motive caused the highest amount of property damage.

Furthermore, the cold statistics on strike-related mayhem and property destruction tell only a minor part of the story. The suffering of the victims of union terrorism is the dimension of this tragedy which defies measurement. Most of the victims, acting on threats of even greater reprisal if they speak out, will suffer their ordeal in silence.

Nevertheless, despite frustration and intimidation, the chorus of worker voices willing to speak out publicly about the union abuses they suffer is growing daily.

- These individual voices take us beyond the cold statistics. They help us to share the feelings of the flesh and blood, living Americans who are the real victims of union violence, of the beatings, bombings, shootings, and arson which is encouraged by the present "hands-off" posture of federal law.

At this point, I want to call your attention to the statements of six such victims who have exhibited the rare courage needed to recount their own experience with violent union officials. I personally salute and commend these individuals, and believe they deserve the gratitude of every law-abiding American.

Although you could not find time in your schedule, Mr. Chairman, to hear the direct testimony of these courageous men and women, I am submitting statements from each one, documenting their experience.

In addition, I will summarize here their experiences with compulsory unionism violence. Furthermore, each of these individuals is present in the hearing room today and will be available after the hearing to meet with any interested Member of the Senate.

Deanna Ussery's problems began in March of 1978, when she resigned from the United Steelworkers Local 6178 at the National Rejectors plant in Hot Springs, Arkansas. She could not continue to support a strike -- called to demand reinstatement of the Local's president who was fired for threatening a company vice president -- she felt was immoral.

Her ordeal reached its climax after the walkout was ended, when she and four other women were subjected to a campaign of intimidation and terror. Late one night her home was innundated by shotgun blasts that peppered the bed of her eight-year-old daughter. By a stroke of fortune, the little girl was away overnight. Local authorities advised her to have her daughter sleep in another room.

"If I could be victimized by my own labor union," said Ussery, "with no criminal penalties assessed against the perpetrators, the same could happen to other workers elsewhere."

Like Deanna Ussery, Anita DiLuzio crossed a union picket line and was singled out for some special attention.

Upon resuming work at the Wesco Electrical Company in Greenfield, Massachusette, Mrs. DiLuzio was dealt a lesson in terror by militants from the International Brotherhood of Electrical Workers-union.

At first, the terror tactics revolved around verbal threats of intimidation hurled at Mrs. DeLuzio. Not satisfied, the militants soon turned on the two DiLuzio children, following and harassing them.

And as so many other victims of union harassment, the DiLuzios found local authorities to be extremely reluctant to get involved.

After going to the police station to report having her car window smashed by picketers, Mrs. DiLuzio returned home to find one of her daughters had been hit by a rock during a rock-and-bottle assault on the family home -- it took three frantic phone calls before the local police would even send a squad car.

Reflecting on the reaction of the local authorities to her ordeal, Mrs. DiLuzio said, "No matter what the strikers did, they were protected by their powerful union. They were free to make my town a battle zone because no one had the power to stop them."

Mike Matthews, president of the Electro-Harmonix Company in New York City, learned from painful, personal experience what can happen to workers when the resist the organizing activities of union officials. His struggling young company had grown to where it employed nearly 130 people.

On August 3, 1981, International Ladies Garment Workers (ILGWU)-union agents appeared on the street outside Matthews' factory and began to pass out authorization cards for a union election. Most Electro-Harmonix employees, satisfied with their jobs, refused to sign the cards. It didn't take long for violence to erupt.

Monday morning, August 10, Matthews was confronted by an angry, milling mob of union militants as he arrived at work. Catcalls and curses escalated quickly, and when Matthews stepped back outside to escort some beleaguered employees into the plant, eight thugs beat, kicked, and punched him from all sides.

Throughout that long and bitter week, Mr. Matthews' employees were ambushed in the subways; those who managed to elude the subway gangs were forced to run a 100-yard gauntlet of cursing, kicking, and shoving picketers lining the sidewalks behind flimsy police barriers.

Employees who refused to sign the union cards were pelted with eggs and beaten with sticks. One worker suffered brain damage from a beating at the hands of ILGWU agents.

The violence has subsided, but its impact on the Electro-Harmonix employees has left scars.

"My employees at Electro-Harmonix and I know from painful, personal experience how terrifying life can be when government fails in its responsibility to protect its citizens from violent hoodlums," said Matthews.

For Ron and Karen Yokum of North East, Pennsylvania, union-inspired vengeance is an ongoing nightmare. Ron Yokum, who works as the employee liaison officer for R*U*R Industries, has been targeted for retribution since early June, when Ron failed to obey union orders to leave his job.

Shortly after the strike began, a Molotov cocktail was hurled at the side of the Yokum's home and burst into flames. That, however, was only the beginning. Ron Yokum has been attacked by a man slinging a baseball bat at a window screen separating Mr. Yokum from his attacker, who was bashing in a window in the Yokum's home.

Even their three-year-old daughter has not escaped unscathed. At one point, a wine bottle was thrown at her which shattered, splattering glass onto her leg. These incidents are only a small part of the running campaign of violence, vandalism, and threats the Yokums have endured because local authorities will not or cannot protect them.

Repeated pleas for help from local law enforcement officials have proved to be of no avail. One day, as Mr. Yokum went to work, even a sheriff's department deputy said, "Here comes that scab."

Right now, not a day goes by when the Yokums don't fear for their very lives.

After over twenty years in the business of erecting fences, Donald T. Fritz could never dispel the dread that he and his workers might, at any time, be set upon by union militants. His fear was well-founded.

In 1954, upon the death of his father, Mr. Fritz took over J.T. Fritz and Sons of Lutherville, Maryland. As head of an independent business, he was almost immediately confronted by numerous incidents, intimidation, and harassment from elements of Local 16 of the Ironworkers Union in Baltimore.

Their message to Fritz -- expressed in the most foul and vile language -- was clear -- either hire from Local 16 or get a steel H-beam wrapped around his neck.

When the threats included promises to tear up a job, the state and local police responded by not responding. As a result, Fritz and his brother spent many a night guarding their property. Their vigilance and courage brought a period of relative peace -- but it didn't last.

Finally, in 1974, the worst of Mr. Fritz's fears were realized. After refusing a demand by officials of Local 16 to shut down a job, Fritz was attacked and viciously beaten while company property was wrecked and vandalized.

Four years after suing, a $110,000 judgement was brought against Local 16 of the Ironworkers Union. I repeat Mr. Fritz's response to the verdict, "All the money in the world will never make up for all the years of pain and trauma that I, my workers, and my family had to endure just to earn a living...When, I would like to know, are the people who make the laws going to make laws that will protect people like me and my employees from the threatening and violent tactics of union radicals?"

John Seats, executive vice president of the Mary Helen Coal Company in Eastern Kentucky, found out how reluctant local authorities can be to bring perpetrators of compulsory unionism violence to justice during the 1981 United Mine Workers strike.

When the plant resumed operations -- twenty days after the strike began -- mass pickets gathered at the entrance, throwing rocks and bottles and threatening returning workers. The next day, a ten-truck convoy carrying coal to the plant was barraged by gunfire. Four drivers were wounded.

Members of the Kentucky State Police were with the UMWA pickets prior to the ambush but did not prevent, investigate, or detain any of the people who participated.

When furnished the license numbers of three vehicles that carried the guns, they refused to conduct an investigation.

Despite a restraining order from Circuit Court, UMWA pickets continued to harass Mary Helen and workers who simply wanted to enter the plant to do their jobs. At the beginning of the strike, Kentucky Governor John Brown had told the press he did not intend to "baby-sit" independent operators.

Mr. Chairman, Members of the Committee, in the name of equal protection of the law, in the name of human decency and respect, in the name of providing a more peaceful and humane society, I urge you to quickly approve S. 613.

PREPARED STATEMENT OF ALAN G. ROSS

Mr. Chairman, members of the Subcommittee, my name is Alan G. Ross. I am an attorney with the firm of Wickens, Herzer and Panza Co. which represents the Northern Ohio chapter of Associated Builders and Contractors. I am here today on behalf of the national office of Associated Builders and Contractors (ABC), a construction management association representing over 17,000 contractors, suppliers and associates who support the "Merit Shop" philosophy of awarding construction contracts to the lowest responsible bidder.

ABC appreciates the opportunity to appear before you today to discuss the issue of violent and extortionate activity which all too frequently occurs during the course of legitimate labor-management disputes. I would like to focus particular attention on the inadequacies of the federal anti-extortion statutes in dealing with this problem.

As currently construed by the United States Supreme Court in the Enmons decision, the Hobbs Act makes lawful the use of force or violence by labor organizations when such labor organizations are attempting to "achieve legitimate labor ends." Based upon the difficulty of local law enforcement officials to control mob violence at construction sites and the local state court's inability to enforce orders for injunctive relief, it is respectfully submitted that the Hobbs Act should be amended so as to provide a federal criminal law that would make it unlawful for a labor organization to use force or violence in order to achieve its ends. By not affording such protection, contractors have often been forced to literally work in a jungle without effective protection.

Congress has enacted numerous statutes that give federal agencies and the courts the authority to regulate labor violence. In 1947 Congress extended the jurisdiction of the National Labor Relations Board to include the prosecution of union unfair labor practices, as well as employer unfair labor practices, through enactment of the Taft-Hartley amendments to the National Labor Relations Act. Section 8(b)(1)(A) of these amendments gives the NLRB power to regulate union violence that interferes with the right of workers to refrain from engaging in union activity.

The NLRB has prosecuted unions under section 8(b)(1)(A), if the employer, whose employees are being interfered with, is engaged in interstate commerce. Of course the NLRB remedy for labor violence is administrative and not punitive in nature. The NLRB can not impose any criminal penalties or fines on unions guilty of labor violence. Further, the National Labor Relations Act would not, for instance, find a violation of section 8(b)(1)(A) of the Act if a union official beat up the president of a company in the course of a labor dispute unless it occurred in the presence of bargaining unit employees and had the effect of influencing their decision to engage in or refrain from engaging in union activity. Company officials who have supervisory status are generally excluded from the protection of the National Labor Relations Act, including protection from personal injury at the hands of union directed violence.

Federal jurisdiction over labor violence can also be found in the Travel Act, 18 USC § 1952, and the Rackateer Influenced and Corrupt Organization Act (RICO), 18 USC § 1962(d), which make unlawful certain crimes such as extortion, bribery and arson if these crimes are engaged in or affect interstate commerce.

In fact, the RICO Act specifically names unions as enterprises that the Act has jurisdiction over. However, the Travel Act and the RICO Act carve out a very narrow exemption to the general immunity given to the unions for labor violence by the Enmons decision. To my knowledge, the Travel Act and the RICO Act are used to prosecute unions only when arson or explosives are integrated into union's labor activity. Notwithstanding the use of arson or explosives, it appears that unions can engage in any other violent means to carry out its labor goals because of Enmon's.

For the purposes of this presentation, I would like to focus on construction site situations. First, it is critical that this Subcommittee have an idea of the setting from the contractor's point of view.

When bidding work, general contractors, depending upon the complexity of the work involved, solicit bids from any subcontractors in various trades. Once the contract is awarded and performance is commenced, one may find numerous subcontractors on a job site at one time. Typically, the manner in which problems with labor organizations arise on the job site is when a particular subcontractor does not have a collective bargaining agreement with a particular labor organization. At first, the labor organization seeking recognition engages in peaceful persuasion. In accordance with the National Labor Relations Act, an employer is not required to recognize and bargain with a labor organization unless the labor organization represents a majority of its employees and then only if a valid petition for an election is filed with the NLRB and such labor organization is successful in a Board-conducted election.

However, if the labor organization does not obtain recognition from the employer, short of organizing the employers employees and filing a petition with the Board in order to "achieve its legitimate labor ends", the labor organization must put pressure upon the subcontractor in some manner. Typically, the only means by which the labor organization can achieve its ends is to unlawfully enmesh other contractors then working on the job site in the dispute. Essentially, the course of conduct pursued by the labor organization is to place a picket on the job site and, thereby, through various unlawful means in violation of the National Labor Relations Act, cause a complete cessation of work at the job site. At that point, the subcontractor involved may file unfair labor practice charges with the National Labor Relations Board and/or file a complaint in the state court for injunctive relief to merely limit the number of pickets. Unfortunately, those two remedies are often inadequate or cannot be readily obtained.

At recent situation in Toledo, Ohio demonstrates the inadequacy of the current state and federal remedies. H.K. Johnson Corporation is a general contractor based in Trenton, Michigan. In early 1981, H.K. Johnson successfully bid upon and was awarded a contract for the construction of a pre-engineered building that was to be used as a distribution center for Snap-On Tools in Toledo, Ohio.

Shortly after H.K. Johnson commenced construction at the job site in Toledo, Ohio in March of 1981, a business agent from the Ironworkers Union contacted H.K. Johnson Corporation and demanded that it recognize the Ironworkers Union and sign an agreement covering those persons performing ironwork on the building. This initial demand was repeated several days later. In both instances, H.K. Johnson Corporation informed the business agent from the Ironworkers Union that it would not recognize the union or execute a union agreement. Of course, the Ironworkers Union could have spoken with Johnson's employees and attempted to convince them that they should be members of the union and filed a petition for an election with the NLRB upon presenting an adequate showing of interest. No attempt was made to organize Johnson's employees.

Several days after the second demand for recognition, business agents from nine different trade unions in the Toledo area came to the job site and informed the job superintendent for H.K. Johnson that they would not let the job "go non-union" and that before H.K. Johnson finished the job, "they would all end up in court and it was going to cost everybody a lot of money".

In response to the above statement, H.K. Johnson immediately posted no trespassing signs around the job hoping that this would be a deterrent to business agents or other union members from coming on the job site and harassing the employees. However, their efforts proved to be of no avail. On March 23, while Johnson was building forms for pouring concrete piers, cars began to appear on the streets around the job site. Two men who said they were from the Ironworkers Union came on the job and told the superintendent that they "would appreciate it if you would quit work and go back to Michigan". After conferencing, the Johnson employees decided not to comply with the Ironworkers request and remained on the job. They believed that they had a right to work and earn a living whether or not they chose to be members of a labor organization. Shortly thereafter, approximately 50 men massed in front of the job and began to approach the job site. The job superintendent pointed to the no trespassing signs around the job and was told by the men approaching the job that those signs meant nothing to them. Recognized in the group of men were business agents from several of the building trades unions. As the men stormed on to the job, they demolished all forms that had been constructed and damaged a bulldozer and other equipment then on the job site.

The next day, in the presence of a police officer from the Toledo Police Department, business agents from the Ironworkers Union and Bricklayers Union again asked Johnson if the company would sign a union contract. They also inquired about the names of all other subcontractors that would be working on the job and whether or not they had union agreements. It was again indicated that the company was not interested in signing a union agreement and would not disclose the names of any of its subcontractors. After the conversation seemed complete, the police officer informed the contractor that he believed things could "get nasty" when matters of this nature were not worked out between business and labor.

After the onslaught of the job mentioned above, the employees and subcontractors of Johnson found it necessary to gather as a group at a nearby gas station and go to the job in a group each morning. On April 2, 1981, the employees were gathered at the gas station at or around 7:00 a.m. At that time there were in excess of 100 union men massed around the job site. The Toledo police had been summoned and met the employees of Johnson with six police cruisers in order to escort them on the job site. The police informed them that they would escort them on to the job site but that they would not stay. They told Johnson's employees and the subcontractors that if they had any problems all they would have to do would be to telephone the police again and they would be escorted off the job site. The police were informed there was no telephone at the job site.

Thus, in the face of over 100 pickets surrounding the job site and without any action proposed to be taken by the police to disperse the crowd, the employees decided not to go to work that day. That day, the job site was again stormed, apparently in retaliation against Johnson for using a non-union plumber. Not only was all of the plumbing work torn out of the ground, but masonry block was broken, concrete reinforced piers were damaged, paint was poured on various items and other supplies around the job site were damaged. A policeman from the Toledo Police Department watched the devastation in progress and apparently made no call to the police department in order to curb the violence. The Toledo Police Department is also unionized. Through the next several days, 25 to 100 pickets ringed the job site during working hours. Practically speaking, it was impossible for Johnson or any of his subcontractors to perform any work.

On April 8, 1981, Johnson retained counsel in Toledo, Ohio and filed a Complaint and Request for Temporary Restraining Order in the state court which was granted and issued on April 9, 1981. That order was issued against the various Toledo building trades unions. Two days later, on Saturday, April 11, 1981, despite the issuance of a temporary restraining order limiting the number of pickets at the job site, in excess of 100 pickets again surrounded the job site. This time, however, the picketers were allegedly picketing on behalf of the Teamsters Union.

Again, the Toledo Police were summoned to the job site and this time responded with not only squad cars but paddy wagons. After making several arrests, Johnson and his employees were able to gain access to the job site. However, the police could not control the mob. Three of the picketers approached Mr. Johnson and advised him that he had better get the Michigan State Police to get him home from Ohio while another indicated that there was no way he would make it alive to the Ohio line. As soon as Johnson's employees began working, the pickets began pressing toward the job site. The Captain of the Toledo Police, then present, indicated that he could not control the pickets and insisted that Johnson pull off the job.

After April 11, 1981, Johnson was forced to engage around the clock security. Beginning Monday, April 13, 1981 and though April 24, 1981, despite the issuance of a state court Temporary Restraining Order limiting the number of pickets, there was often in excess of 25 pickets at the job site.

On April 25, 1981, after containing the security guards present, more than 50 union members again stormed the job site and did extensive damage to the structure.

Finally, realizing that the state court injunction was of little or no use because of the inability of the Toledo Police to enforce the injunction or unwillingness to enforce the injunction, Johnson filed unfair labor practice charges with the NLRB on April 27, 1981. Although the Labor Board found merit to the charges, the process of obtaining injunctive relief proved to be rather slow. During the course of the NLRB investigation, the Judge in the state court action attempted to resolve the dispute by suggesting that H.K. Johnson accede to the union's demands by soliciting bids from contractors in signed agreement with the various labor organizations. As those forced negotiations proceeded over a period of weeks, the labor organizations insisted that they were attempting to work out a settlement and the judge insisted that H.K. Johnson participate in those meaningless negotiations without further intervention from the NLRB. In accordance with the Judge's direction, Johnson did solicit bids from union subcontractors. All of the bids received were above the budget for the project. As such, Johnson rejected the bids and negotiations broke off.

During this period of time it was rumored that the unions would again engage in acts of violence at the job site. The source of this information was the Toledo Police. Realizing that the Toledo Police had been unable to enforce the injunction, the office of the Governor of the State of Ohio was contacted for assistance. However, such assistance was not possible. It was explained that before the state could consider offering assistance, a request must be made by the Mayor of the City of Toledo for the same. It was determined that contact with the city on this issue would be futile. Such requests had been made in the past without success on the basis that a rumor was not sufficient grounds to authorize intervention.

It turned out not to be just a rumor. On May 27, 1981, in the face of a state court injunction and pending NLRB charges, in excess of 50 union men stormed the job again and did substantial damage to the structure, knocking down interior partitions, destroying or damaging parts of the exterior of the building and damaging supplies and equipment. After this further damage was done to the job site, the unions agreed with the NLRB to a Consent Injunction Order in the United States District Court. However, the NLRB did not obtain signature of counsel for the building trades on that Order until June 19, 1981.

In addition, in order to resolve the matter, the National Labor Relations Board entered into Settlement Agreements with the eleven building trades Unions and the

Teamsters Union. The Settlement Agreements all contanined non-admissions clauses. Thus, after devastating the job site several times, the NLRB entered into a Settlement Agreement with the labor oganizations which provided that execution of the Agreement did not constitute an admission that any of the labor organizations had violated the National Labor Relations Act. The remedy for violation of the National Labor Relations Act consisted of the labor organizations posting notices stating they would not violate the National Labor Relations Act in certain respects.

As unfortunate as the above incident was, the real tradgedy was that the union members responsible for the violence escaped criminal prosecution. Clearly, the outrageous, illegal activities the union engaged in consitituted extortion. Clearly, these activities violated all boundaries of accepted labor practices developed since the passage of the National Labor Relations Act. But, according to the Supreme Court, the above action was not a violation of the federal extortion statutes since the unions were pursing "legitimate" labor activities (an organizing attempt) at the time the violence occurred.

ABC advocates legislative changes which would restore the effectiveness of the of the Hobbs Act in prosecuting serious cases of extortion and violence when they occur in the course of a legitimate labor dispute.

I think it might be helpful to the committee if I provide a brief history of the issues surrounding the Supreme Court's decision in U. S. v. Enmons.

Federal legislative attempts to control union violence began with the Anti-Racketerring Act of 1934, which was one of a number of bills resulting from investigations into racketeering, conducted in 1933 by a subcommittee of the Senate Committee on Interstate Commerce. With this legislation, the Congress recognized that labor violence was a problem which state and local governments could not effectively control.

The Anti-Racketeering Act of 1934 set penalties for those who use or threaten to use force, violence or coercion to obtain money or property or other valuable consideration, or the purchase or rental of property, or protective services. However, this prohibitition specifically did not include "the payment of wages by a bona fide employer to a bona fide employee". In short, extortion against employers was illegal except in the case of wages.

This exemption lead to a Supreme Court ruling in U.S. v. Local 807 (118 F. 2d. 684 (2d Cir. 1941), Aff'd, 315 U.S. 521, (1942) that under the federal Anti-Racketeering Act a New York City Teamsters local could stop trucks as they came into the city and use violence and threats of violence to obtain from the truck owners the equivlent of a days pay either to allow the Teamsters to take trucks into the city or in many instances for simply allowing the trucks to enter the city with their regular drivers. The statute did not include a prohibition against force or violence to obtain "the payment of wages by a bona fide employer to a bona fide employee," and in the U.S. v. Local 807 situation, the court oddly decided that there was a bona fide employer-employee situation as long as the person who extorted the payments offered to do the work. This statute then did not protect the out-of-town drivers nor punish the behavior of the Teamster local.

In 1946 the Hobbs Act was passed to eliminate the wage exemption. The debate on the Hobbs Act indicated that the Congress felt the Supreme Court wrongly decided the Local 807 case, and that the decision was a "distortion of the intent of Congress." (Congressman Hallack, see 91 Cong, Rec. 3193, 3201-02, 3206-07, 3220, 1943). In an effort to be sure that a future similar case would not be similarly decided, the Congress rewrote the 1934 Anti-Racketeering Act and took care to completely eliminate the exemption on which the decision was based. The Hobbs Act reads as follows:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Congressman Hobbs indicated during debate that this bill, while eliminating the wage exemption, was in fact designed to correct the deficiency in the 1934 federal law. The Congress was intent on making sure that decisions such as in the Local 807 case would not be repeated. Extortion this time was defined to include the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear.

In 1973, the Supreme Court ruled, in the case of U.S. v. Enmons, that the Hobbs Act has little application to the extortionate activities of employees or union officials in labor disputes. The court reasoned the Act applies to coercive action to wrongly gain money or property, but not where the objective of the extortion is to secure wages and benefits which could have been obtained legitimately through collective bargaining. In other words, a labor organization using violence to force an employer to make concessions in the collective bargaining situation would not be committing extortion and therefore would not be subject to criminal penalties outlined in the Hobbs Act. Even though their means are violent, the end they seek — higher benefits -- is a legitimate one.

In was the appearance of the term "wrongful use of force" in the Act on which the Supreme Court decision hinged. The defendants in the case had been charged with five specific acts of destruction against company transformers, but the case was dismissed in District Court because no violation of the Hobbs Act had been shown.

The Supreme Court split 5-4 on the question of whether acts of violence could be considered extortion in instances where they involved legitimate strike demands. The majority ruled that the Hobbs Act proscribed the use of violence to gain illegal ends such as kickbacks or payments for superfluous services.

In reading Enmons, it must be kept in mind that Mr. Justice Stewart's opinion for the Court was written for a plurality of four. The concurring Justice, Blackmun, joined the Court insofar as holding that the statute was unclear as to what type of violence was to be reached. The dissent by Mr. Justice Douglas, the only member of the Court to have served when the Hobbs Act became law, found the court's reading of the legislative history thoroughly unpersuasive. Douglas thought it clear that the Hobbs Act was meant to cover the labor violence situation: "The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words (of the statute) were defined to avoid any misunderstanding." Representative Hobbs' own statement on introducing the legislation further bears out this reading:

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion. (91 Cong. Rec. 11912)

Although most states do have laws to prosecute union violence and extortion that occurs within the state, there are factors which often make prosecution and conviction under these laws difficult. State and local public officials often have a problem prosecuting labor violence and extortion because of the political and financial clout of the unions. Such issues often leave a community deeply divided and it may be difficult to obtain prosecution or conviction. In many cases, labor violence can exert a pressure on communities and local institutions which can simply be beyond their resources to contain.

All to often, this issue of jobsite violence and extortion is debated as a labor issue rather than as a serious type of criminal activity. Our association has often been accused of promoting this issue only for purpose of making every incident of minor picket line violence subject to federal prosecution. Nothing could be further from the truth. We want to be very careful to outline the specific offenses that would be prosecutable at the federal level as well as the dollar amounts of property damage, below which no federal prosecution would be necessary. ABC feels that S.613 does an adequate job of limiting its application only to cases involving serious violence and extortion. However, Senator Thurmond has indicated a willingness to amend S.613 so as to make it even clearer that minor incidents of violence would not be included in the scope of this legislation. We will certainly support his efforts in this regard.

We are pleased that S.613 specifically states that the Hobbs Act should not be construed to exclude federal jurisdiction over extortionate activity that takes place in the course of a legitimate business or labor dispute. This, in our opinion, is the central feature of this legislation, for it essentially reverses the Enmons decision.

We would like to work together with the Congress, the Justice Department, the labor unions and with other interested parties in order to design a thoughtful package of reforms which will seek a solution to this very serious problem.

We urge this subcommittee to endorse the proposition that disputes in our socity must be peacefully resolved for the common good. We must never assent to the proposal that the ends justify the means. In a concern for the quality of life in our society, we hold the belief that any ends that must be obtained by threats of violence and personal injury, or acts of violence and property destruction, are inimical to our system of laws and justice, and should be outlawed by federal statutes.

Mr. Chairman, this concludes my prepared remarks, I'll be happy to respond to any questions you may have.

PREPARED STATEMENT OF JIM W. SUPICA

MY NAME IS JIM SUPICA AND I AM PRESISENT OF UNITED CONSTRUCTION COMPANY LOCATED IN OVERLAND PARK, KANSAS. WITH ME IS BRIAN DEERY A MEMBER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA STAFF. I AM HERE TODAY REPRESENTING THE MEMBERS OF OUR ASSOCIATION IN MY CAPACITY AS CHAIRMAN OF THE AGC CRIME PREVENTION COMMITTEE. THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA IS PLEASED TO BE GIVEN THIS OPPORTUINTY TO PRESENT OUR VIEW ON S.613.

THE CONSTRUCTION INDUSTRY WHICH HAS HISTORICALLY ACCOUNTED FOR 10 PERCENT OF THE GROSS NATIONAL PRODUCT OF THE UNITED STATES, HAS BEEN REPEATEDLY HARASSED BY WANTON, ORGANIZED JOBSITE VIOLENCE. THERE HAVE BEEN MANY, WELL DOCUMENTED CASES OF SERIOUS CONSTRUCTION SITE VIOLENCE RESULTING IN BODILY INJURY AND LOSSES OF MILLIONS OF DOLLARS IN PROPERTY. FOR FOUR MONTHS IN 1973 READERS DIGEST MAGAZINE RAN A

SERIES OF ARTICLES DIPICTING THESE ACTS OF MAJOR VIOLENCE INCLUDING BEATINGS, FIRES, BOMBINGS AND OTHER MASSIVE PROPERTY DAMAGE AND PERSONAL INJURY WHICH OCCURRED NATIONWIDE DURING THE COURSE OF LABOR DISPUTES.

IN 1977 MEMBERS OF MY OWN CHAPTER THE ASSOCIATED GENERAL CONTRACTORS OF MISSOURI AND THE HEAVY CONSTRUCTORS ASSOCIATION OF THE GREATER KANSAS CITY AREA, WERE THE VICTIMS OF MASSIVE PROPERTY DAMAGE FOLLOWING THE EXPIRATION OF THE COLLECTIVE BARGAINING AGREEMENT. MANY INCIDENTS WERE REPORTED AND INCLUDED ACID BEING POURED IN THE ENGINES OF HEAVY CONSTRUCTION EQUIPMENT WITH RESULTING DAMAGE ESTIMATED TO EXCEED ONE MILLION DOLLARS, SUGAR POURED IN CONCRETE RESULTING IN $90,000 OF DAMAGE, CLUBS AND OTHER WEAPONS BEING USED ON WORKMEN AND MACHINES, EMPLOYEES BEING SHOT AT AND THE LIST CAN GO ON AND ON. I MUST MAKE IT CLEAR, THERE IS NO PROOF THAT THESE ACTS WERE PERPETRATED BY LABOR OFFICIALS OR BY THEIR AGENTS TO INFLUENCE THE NEGOTIATIONS. HOWEVER, THE CONTRACTORS WHO SUFFERED THE GREATEST LOSSES WERE ALL MEMBERS OF THE LABOR NEGOTIATING COMMITTEE. THE PRESIDENT OF THE CHAPTER, WHO SERVED AS THE LEADER IN THESE NEGOTIATIONS, HAD THE ENGINES OF 14 MACHINES DAMAGED BY SULFURIC ACID WITH DAMAGE ESTIMATED BY THE STATE HIGHWAY PATROL TO BE IN EXCESS OF 1/2 MILLION DOLLARS.

THE POINT IS THAT THERE IS NO PROOF LINKING THESE ACTS TO THE LABOR NEGOTIATIONS OR PROVING THEM UNRELATED TO THE NEGOTIATIONS, BECAUSE THERE WAS LITTLE INVESTIGATION. THERE WAS LITTLE INVESTIGATION BECAUSE THE LOCAL SHERIFF, CITY AND STATE POLICE ARE RELUCTANT TO BECOME INVOLVED IN THESE MATTERS. HOWEVER, THE FBI AND OTHER FEDERAL OFFICIALS LACK JURISDICTION. THE RESULT IS THAT A CONTRACTOR CAN BE PLACED IN A POSITION WHERE HE MUST ACCEPT LABORS DEMANDS OR BE HARRASSED BY THREATS BACKED UP WITH SABOTAGE AND VIOLENCE FROM WHICH HE IS GIVEN NO PROTECTION.

I AM SURE THAT WE COULD BRING IN A LONG LINE OF CONTRACTORS WITH HORROR STORIES OF THEIR OWN TO TESTIFY BEFORE THIS COMMITTEE. HOWEVER, I DO NOT THINK THIS IS NECESSARY BECAUSE THE PROBLEM HAS BEEN REPEATEDLY IDENTIFIED BY THE CONGRESS AND GOVERNMENT AGENCIES.

THE TREASURY DEPARTMENT'S BUREAU OF ALCOHOL, TOBACCO AND

FIREARMS REPORTED THAT THE LABOR RELATED MOTIVE BEHIND BOMBINGS IN 1977, 1978, 1979 RESULTED IN THE HIGHEST AMOUNT OF PROPERTY DAMAGE COMPARED TO ALL OTHER MOTIVES. THE PROBLEM HAS BEEN CLEARLY IDENTIFIED. THE REAL QUESTION IS HOW CAN IT BE ELIMINATED?

CONGRESS TOOK ACTION IN 1945 BY WAY OF THE HOBBS ACT WHICH MADE THE OBSTRUCTION OF INTERSTATE COMMERCE BY ROBBERY OR EXTORTION A FEDERAL CRIME. AT THE TIME THIS ACT WAS PASSED THE CONGRESSIONAL RECORD SHOWS THAT CONGRESSMAN BALDWIN SUMMARIZED THE BILL'S INTENT BY SAYING "THIS BILL WOULD NOT HAVE BEEN PRESENTED TO THE HOUSE IF ORGANIZED LABOR HAD RECOGNIZED LAW AND ORDER IN STRIKING AND IN ESTABLISHING THEIR RIGHTS, AS THEY HAVE A RIGHT TO DO ... LABOR HAS A RIGHT TO STRIKE, BUT WHEN LABOR PERPETRATES THAT SORT OF THING (HE WAS REFERRING TO AN EXTREMELY VIOLENT ACTIVITY RELATED TO A TAXICAB STRIKE) THEY ARE GOING FAR BEYOND THE BOUNDS OF REASON." MR. CHAIRMAN, THESE WORDS SUMMARIZE THE SENTIMENTS OF AGC MEMBERS. CERTAINLY LABOR HAS THE RIGHT TO STRIKE BUT MANAGEMENT ALSO HAS A RIGHT TO THE FULL PROTECTION OF THE LAW WHEN EXTORTINATE ACTIONS ARE PERPETRATED TO INFLUENCE DECISIONS. VIOLENCE AND THREATENING ACTIONS HAVE NO PLACE IN LEGITIMATE LABOR NEGOTIATIONS.

IN 1973, HOWEVER, THE SUPREME COURT ISSUED ITS INTERPRETATION OF HOW THE HOBBS ACT APPLIES DURING THE COURSE OF A LABOR DISPUTE. IN THE CASE OF U.S. VS TRAVIS PAUL ENMONS, THE COURT DECIDED THAT THE HOBBS ACT DOES NOT APPLY TO VIOLENCE WHICH IS USED TO ACHIEVE LEGITIMATE LABOR OBJECTIVES. TO PARAPHASE, THE END JUSTIFIES THE MEANS. THE COURT WAS CLOSELY DIVIDED ON THIS ISSUE, 5-4, BUT THE MAJORITY OPINION WAS BASED ON THE INTERPRETATION OF THE WORD "WRONGFUL." THE HOBBS ACT DEFINITION OF "EXTORTION" IS "THE OBTAINING OF PROPERTY FROM ANOTHER, WITH HIS CONSENT, INDUCED BY WRONGFUL USE OF ACTUAL OR THREATENED FORCE, VIOLENCE, OR FEAR..." THE COURT FOUND THAT IN THE ACT, "WRONGFUL" IS INTENDED TO" LIMIT THE STATUTE'S COVERAGE TO THOSE INSTANCES WHERE THE OBTAINING OF THE PROPERTY WOULD ITSELF BE 'WRONGFUL' BECAUSE THE ALLEGED EXTORTIONIST HAS NO LAWFUL CLAIM TO THAT PROPERTY." JUSTICE BLACKMUN IN A CONCURRING OPINION HOWEVER NOTED THAT "SUCH ACTS DESERVE TO BE DIGNIFIED AS FEDERAL CRIMES" AND HE CALLED ON THE CONGRESS TO CLARIFY IF IT INTENDS THAT THESE ACTS BE COVERED BY FEDERAL STATUTE. I MUST ADD HERE THAT THE DIS-

SENTING JUSTICES FELT THAT INDEED CONGRESS HAD EXPRESSED ITS INTENTION, ALTHOUGH VAGUELY, AND THAT IT DID PLAN FOR THE HOBBS ACT TO EXTEND TO LABOR DISPUTES.

AGC VIEWS S.613 AS THE PERFECT OPPORTUNITY FOR CONGRESS TO REASSERT ITS ORIGINAL INTENTION IN PASSING THE HOBBS ACT AND TO OVERTURN THE _ENMONS_ DECISION. EXTORTION IS A CRIME, NO MATTER WHO COMMITS IT AND NO MATTER WHAT THE OBJECTIVE IS, AND IT SHOULD BE TREATED AS SUCH. HOWEVER, THE VOICES AGAINST OVERTURNING _ENMONS_ HAVE RAISED THIS ISSUE TO A HIGHLY EMOTIONAL PLANE BY CLAIMING THAT SUCH AN APPROACH WOULD SUBJECT THE PICKET LINE HOT HEAD WHO LOOSES HIS TEMPER AND THROWS A PUNCH TO A FEDERAL EXTORTION CONVICTION. THIS IS NONSENSE AND HAS BEEN SHOWN TO BE SUCH IN THE PAST. WHEN THE _ENMONS_ DECISION WAS REACHED JUSTICE WILLIAM O. DOUGLAS WROTE THE DISSENTING OPINION IN WHICH HE POINTED OUT THAT THIS VERY ARGUMENT HAD BEEN MADE WHEN THE HOBBS ACT WAS ENACTED AND HAD BEEN REJECTED. IT WAS HIS VIEW, AND THE VIEW OF PREVIOUS COURT RULINGS THAT "MISCHIEVOUS CONDUCT DURING A STRIKE AND ACTIONS WHICH ARE 'THE BYPRODUCT OF FRUSTRATION ENGENDERED BY A PROLONGED, BONA FIDE COLLECTIVE BARGAINING NEGOTIATION' ARE OFTEN ONLY LOW-LEVEL ACTS OF VIOLENCE THAT MAY BE UNFAIR LABOR PRACTICES OR, AT BEST, SUBJECT TO STATE, NOT FEDERAL PROSECUTION." IT WOULD SEEM THAT LABOR'S WORST FEAR WAS ELIMINATED LONG AGO. THE CRIME WE ARE TALKING ABOUT HERE IS NOT THE PICKET-LINE SCUFFLE BUT THE MAJOR ACTS OF VIOLENCE WHICH ARE DELIBERATELY PLANNED TO BROW BEAT MANAGEMENT INTO A LABOR AGREEMENT.

IN S. 613, SENATOR THURMOND HAS CONTINUED THIS PROTECTION FOR THE INDIVIDUAL WHO IS NOT ABLE TO CONTROL HIS EMOTIONS. A PERSON CAN NOT BE CONVICTED OF COMMITTING EXTORTION UNLESS ALL OF THE ELEMENTS OF THAT CRIME ARE PRESENT. THERE MUST BE THE INTENTION TO UNDERTAKE VIOLENT ACTIONS DELIBERATELY TO INFLUENCE MANAGEMENT'S DECISION. IN ADDITION, PROPERTY DAMAGE MUST EXCEED $2,500 BEFORE IT WOULD FALL INTO THE EXTORTION CATEGORY.

ANOTHER EMOTIONAL ARGUMENT PUT FORTH IS THAT THIS LEGISLATION WOULD LIMIT LABOR'S RIGHT TO STRIKE. NOTHING COULD BE FURTHER FROM THE TRUTH, S.613 LISTS ALL OF THE SECTIONS OF THE U.S. CODE WHICH

GUARANTEE LABOR'S VARIOUS RIGHTS AND SPECIFICALLY STATES THAT THERE IS NO INTENTION TO REPEAL OR MODIFY ANY OF THESE SECTIONS OF THE LAW. THIS ARGUMENT IS TOTALLY WITHOUT SUBSTANCE.

BEFORE I CONCLUDE I THINK THAT IT IS NECESSARY TO ADDRESS ONE OTHER ARGUMENT WHICH HAS BEEN RAISED AGAINST OVERTURNING ENMONS BUT WHICH DOES NOTHING MORE THAN CLOUD THE ISSUE. MANY HAVE ARGUED THAT THIS IS A STATES' RIGHTS ISSUE BECAUSE STATE AND LOCAL AUTHORITIES HAVE ALWAYS BEEN RESPONSIBLE FOR ENFORCING LAWS AGAINST THIS KIND OF ACTIVITY. IT IS IRONIC THAT THE SAME LABOR ORGANIZATIONS THAT FOR YEARS HAVE ARGUED THAT AT THE VERY LEAST DUAL STATE/FEDERAL COVERAGE AND IDEALLY FEDERAL PREEMPTION IS NECESSARY TO PROTECT WORKERS' RIGHTS, NOW ARGUE EXACTLY THE OPPOSITE LOGIC WHEN IT COMES TO OFFERING PROTECTION FROM VIOLENCE. WHAT IS PARTICULARLY IRONIC IS THAT IT IS PRECISELY BECAUSE LABOR HAS BEEN SO SUCCESSFUL IN OBTAINING FEDERAL PREEMPTION IN LABOR LAWS THAT THE SUGGESTED EXTORTION LANGUAGE IS SO NECESSARY. STATES HAVE BEEN EXCLUDED FROM JURISDICTION IN LABOR MATTERS FOR A LONG TIME AND THIS PHILOSOPHY HAS BEEN EXTENDED INTO THE LAW ENFORCEMENT AREA. THE STATES SEEM TO HAVE THE ATTITUDE THAT LABOR MATTERS SHOULD ALL BE HANDLED BY THE FEDERAL GOVERNMENT AND THEY ARE, THEREFORE, RELUCTANT TO BECOME INVOLVED. BECAUSE OF THIS ATTITUDE IT IS NECESSARY TO RETURN TO FEDERAL LAW ENFORCEMENT OFFICIALS THE TOOLS NECESSARY FOR PROVIDING PROTECTION DURING A LABOR DISPUTE.

AGC FEELS THAT ENACTMENT OF S.613 WILL ACCOMPLISH THE LONG SOUGHT AFTER GOAL FOR WHICH THE HOBB ACT WAS INTENDED. THIS BILL DOES NOT CREATE ANY NEW FELONY UNDER FEDERAL LAW BUT MERELY RESTATES IN A CLEARER WAY THE INTENT OF THE HOBBS ACT. AGC FEELS THAT THIS BILL WOULD ONLY ACT TO GIVE MORE MUSCLE TO THE ENFORCEMENT OF ALREADY EXISTING STATE STATUTES IN A SITUATION WHERE STATE AND LOCAL POLICE ARE RELUCTANT TO TAKE ACTION. IT WOULD ACT AS A DETERRENT AGAINST VIOLENCE AND WOULD PROVIDE THE PROTECTION SO DESPERATELY NEEDED. THIS WOULD BE ACCOMPLISHED WITHOUT INFRINGEMENT ON ANY RIGHTS OF THE STATES OR UNIONS. I ASK THAT THE COMMITTEE GIVE THIS PROPOSAL CAREFUL AND FAVORABLE CONSIDERATION.

Summary of AGC Testimony of S.613

AGC views S.613 as the perfect opportunity for Congress to reassert its original intention in passing the Hobbs Act and to overturn the Enmons decision. Extortion is a crime, no matter who commits it and no matter what the objective is, and it should be treated as such. However, the voices against overturning Enmons have raised this issue to a highly emotional plane by claiming that such an approach would subject the picket line hot head who looses his temper and throws a punch to a federal extortion conviction. This is nonsense and has been shown to be such in the past. The crime we are talking about here is not the picket-line scuffle but the major acts of violence which are deliberately planned to brow beat management into a labor agreement.

In S.613, Senator Thurmond has continued this protection for the individual who is not able to control his emotions. A person can not be convicted of committing extortion unless all of the elements of that crime are present. There must be the intention to undertake violent actions deliberately to influence management's decision. In addition, property damage must exceed $2,500 before it would fall into the extortion category.

Another emotional argument put forth is that this legislation would limit labor's right to strike. Nothing could be further from the truth. S.613 lists all of the sections of the U.S. Code which guarantee labor's various rights and specifically states that there is no intention to repeal or modify any of these sections of the law. This argument is totally without substance.

Many have also argues that this is a states' rights issue because state and local authorities have always been responsible for enforcing laws against this kind of activity. Labor has been so successful in obtaining federal preemption in labor laws that the suggested extortion language is necessary. States have been excluded from jurisdiction in labor matters for a long time and this philosophy has been extended into the law enforcement area. The states seem to have the attitude that labor matters should all be handled by the Federal Government and they are, therefore, reluctant to become involved. Because of this attitude it is necessary to return to Federal law enforcement officials the tools necessary for providing protection during a labor dispute.

AGC feels that enactment of S.613 will accomplish the long sought after goal for which the Hobb Act was intended. This Bill does not create any new felony under federal law but merely restates in a clearer way the intent of the Hobbs Act.

Senator **Mathias**. Thank you all very much.

We have beat the clock. The subcommittee will stand in recess, subject to the call of the Chair, and I will go vote on cloture.

[Whereupon, at 12:55 p.m., the subcommittee adjourned.]

S. 613, A BILL TO AMEND THE HOBBS ACT

THURSDAY, MARCH 11, 1982

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
SENATE JUDICIARY COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 5110, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Also present: Senators Grassley and Specter.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. The subcommittee will come to order.

The hearing will continue on Senate bill 613, a bill to amend the Hobbs Act.

Today the Senate Judiciary Subcommittee on Criminal Law begins its second day of hearings on S. 613, a bill to amend the Federal extortion statute, commonly referred to as the Hobbs Act, to prohibit the use of violence to influence the outcome of a legitimate labor dispute.

On December 10, the subcommittee heard from representatives of organized labor and from the business community. Laurence Gold, testifying for the AFL-CIO, argued that Federal law already prohibits this type of violence, and further, that State and local law enforcement officials are both willing and able to investigate and prosecute such violence when and if it does occur. Mr. Gold concluded, therefore, that there was no real need for this legislation. Even assuming that some sort of extension of Federal law was justified, Mr. Gold argues that S. 613 would extend the law in a discriminatory manner, and would authorize the imposition of fines and prison terms out of all proportion of the underlying prohibited acts.

Representatives of the business community and of the National Right to Work Committee disagreed. A panel of witnesses, including Reed Larson of the National Right to Work Committee, Alan Ross of the Associated Builders & Contractors, and Jim Supica of the Associated General Contractors of America, told the subcommittee that violence in the labor-management arena is a widespread and growing problem. Moreover, the panel asserted that State and local officials are often unwilling to get involved in labor-management disputes even when violence has occurred. The panel viewed the current law as providing a special exemption for violent acts committed by labor unions and their members, and argued that eliminating that exemption would merely remove a current anomaly in the law rather than create a new one.

The Department of Justice also testified at the December 10 hearing. The Department agreed that labor unions and their members currently enjoy a special exemption under the law, but expressed concern that S. 613 as introduced would expand Federal criminal jurisdiction well beyond what is necessary to remove this exemption. The Department felt that this degree of expansion would be an unjustified intrusion into State authority.

As we continue our examination of this legislation today, we will again be hearing from members of both organized labor and the business community. We will also have the benefit of the views of the American Civil Liberties Union. Our first witness will be Robert Thompson, chairman of the Labor Relations Committee, U.S. Chamber of Commerce, who, I understand, will be accompanied by Mr. Arthur Rosenfeld.

Let me say to all of the prospective witnesses, we are laboring under a severe time constraint today. The Senate will go into session shortly. There will be a live quorum call, and thereafter, the Senate leadership will expect all Senators to attend the session on the floor. So it will be necessary for us to move along as quickly as possible if we are going to make the record this morning.

With that somewhat peremptory welcome, Mr. Thompson, we are glad to have your statement. Let me also say that I believe all witnesses have already submitted written statements. Those statements will appear in the record as if read, in full, so that you are at liberty to summarize as you see fit.

STATEMENT OF ROBERT T. THOMPSON, CHAIRMAN, LABOR RELATIONS COMMITTEE, U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY ARTHUR ROSENFELD, LABOR LAW ATTORNEY, U.S. CHAMBER OF COMMERCE

Mr. THOMPSON. Thank you, Senator Mathias.

We have submitted a written statement.

I will attempt to summarize, where possible, so we can save time.

My name is Robert T. Thompson. I am senior partner in the law firm of Thompson, Mann & Hutson, of Washington, D.C., and Greenville, S.C. I am also regional vice chairman of the board of directors of the U.S. Chamber of Commerce and serve as chairman of its labor relations committee. Accompanying me is Arthur F. Rosenfeld, a labor law attorney on the staff of the U.S. Chamber.

The U.S. Chamber is the world's largest business federation, representing more than 225,000 members, including over 220,000 business firms, 2,700 State and local chambers of commerce, and 1,300 trade and professional associations. Our members are greatly concerned with the effects of the judicially created loophole in section 1951 of title 18 of the United States Code, commonly known as the Hobbs Act, and we welcome this opportunity to express support for a Hobbs Act amendment.

The chamber endorses legislation which prohibits extortionate acts of violence during a labor dispute. Violence, intimidation, and other coercive methods do not belong in labor disputes, are contrary to the public interest, and should be banned.

The effect of the 1973 *Enmons* holding was to create a position outside the law and beyond the jurisdiction of Federal authorities for labor unions which engage in threats of violence, or actual violence, in order to secure objectives such as increased wages or benefits. The chamber believes that all parties to a labor dispute—employers, employees, and labor organizations—must be held equally accountable under the law for injuries to the person or property of others inflicted by wrongful acts. We are convinced that Congress intended, in passing the Hobbs Act, that extortionate acts which result in obstruction of interstate commerce constitute a Federal offense, even though the illegal act may have been committed in order to obtain property or concessions which are legitimate objectives of collective bargaining. Congress did not intend to deny to Federal courts the power to interdict violent criminal acts simply because those acts are committed by persons participating or interested in a labor dispute.

THE HOBBS ACT: A. THE LOCAL 807 CASE

The 1946 Hobbs Act, an amendment to the original Federal anti-extortion statute known as the Anti-Racketeering Act of 1934, was passed in response to a Supreme Court interpretation of the earlier statute. In *United States* v. *Local 807, International Brotherhood of Teamsters,* the Court overturned convictions of union members who, through use of violence or threats of violence as trucks entered New York City, obtained the equivalent of wages for driving and unloading the trucks from the owners, even though this work was not performed by the defendants. In effect, these illusory "wages" were paid by the owners, and received by the defendants, to guarantee safe passage into New York City.

The issue in *Local 807* centered on a provision in the Anti-Racketeering Act which excluded from the act's coverage "* * * the payment of wages by a bonafide employer to a bonafide employee." In the final analysis, the *Local 807* decision eliminated the effectiveness of the 1934 Anti-Racketeering Act in regard to labor union violence. In addition, the opinion of the Court in *Local 807* gave rise to a legacy which continues to limit the use of Federal anti-extortion laws in situations involving labor unions. Specifically, the decision implies that legitimate ends justify violent means.

The 1946 Hobbs Act was a direct response by Congress to *Local 807.* The act provides in pertinent part that:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined . . . or imprisoned . . . or both.
>
> (b) As used in this section—
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

The passage of the Hobbs Act was a clear repudiation of the *Local 807* decision, and of the violent behavior practiced by the defendants in that case. However, in *United States* v. *Enmons,* the Court again misconstrued congressional intent, rendering enforcement of the Hobbs Act impotent.

B. THE *ENMONS* DECISION

During an economic strike, certain members and officers of the striking union were alleged to have committed five specific violent acts against the employer, the purpose of which were to strengthen the union's bargaining position. The charges included firing high-powered rifles at company transformers, draining oil from a company transformer, and blowing up a company transformer substation. These allegations certainly go beyond minor acts of picket line "animal exuberance" that the opponents to a Hobbs amendment seem so interested in protecting. It is important that the case in which these acts of violence were averred, *United States* v. *Enmons,* be analyzed with the scope of the violence committed kept well in mind. Repeated references, by representatives of organized labor in testimony presented to this committee on December 10, 1981, to spontaneous picket line "fistfights," are misleading. Proposed amendments to the Hobbs Act are not directed toward, and, indeed, have been carefully drafted to exclude, this type of minor, exuberant behavior.

The issue facing the Supreme Court in *Enmons* was whether the Hobbs Act proscribed the major acts of violence committed by the union for the purpose of forcing the company to agree to wage and benefit demands at the negotiating table. Focusing on the word "wrongful" in the Hobbs Act's definition of extortion, four members of the court held that Congress intended that coverage of the act be limited to situations where the object of the misconduct is wrongful, and where this object, as here, is a legitimate union goal such as higher wages and benefits, there is no "wrongful" taking of an employer's property. This judicial reasoning is the progeny of the "ends justifies the means" logic displayed by the Supreme Court in *Local 807,* the case that led to passage of the Hobbs Act.

It is of note that Mr. Justice Stewart's opinion for the Court in *Enmons* was written for a plurality of four. Mr. Justice Blackmun, concurring, found the legislative history to be confusing, and invited Congress to clarify the act. The dissent by Mr. Justice Douglas, the only member of the Court who was sitting at the time of passage of the Hobbs Act, found the majority's reading of the legislative history to be unpersuasive. "The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Hobbs Act."

NEED FOR FEDERAL JURISDICTION

Opponents of an amendment to the Hobbs Act predicate their opposition on two basic arguments. First, they express concern that individuals, moved in the heat of the moment of a labor dispute to engage in a minor picket line incident such as fisticuffs, will be subjected to a Federal felony prosecution for an expression of relatively harmless animal exuberance. The second argument questions the need for Federal intervention, accompanied by stringent penalties, in labor disputes, where misconduct, it is claimed, is effectively policed by State and local authorities.

The simple response to the initial argument is that organized labor, the chief opponent, surely cannot oppose the prohibition of, in the most effective manner, violent, dangerous behavior, even when the objective of such behavior is a legitimate, traditional goal of collective bargaining. Permitting, indeed, condoning, personal violence, or the destruction of property during a labor dispute, negates the primary purpose of this Nation's Federal labor laws, that of insuring industrial peace. Certainly, the activities of the defendants in the *Enmons* case, firing rifles into and blowing up company property, cannot be labeled as minor, incidental behavior which is entitled to the imprimatur of the Congress and the courts of the United States.

Further, Hobbs can be amended so as to ameliorate concerns regarding the imposition of Federal jurisdiction for minor acts of misconduct erupting during a labor dispute. For example, Senator Grassley, Republican of Iowa, has filed an amendment to sections 1721 and 1722, which are the extortion sections of S. 1630, commonly referred to as the Criminal Code reform bill. Senator Grassley's amendment, which would eliminate the Hobbs Act exemption granted labor organizations by the *Enmons* decision, specifically excludes from Federal jurisdiction minor acts of misconduct incidental to picketing, and also establishes a requisite amount of property damage, below which Federal jurisdiction would not be invoked.

Representative Sensenbrenner, Republican of Wisconsin, recently introduced a Criminal Code reform proposal, H.R. 5679, which permits Federal prosecution for extortion only where the acts or threats of physical force or violence to a person or property constitute a criminal offense punishable by imprisonment for a period greater than 2 years in the State, district, or territory in which the acts occurred. The proposals offered by Senator Grassley and Representative Sensenbrenner demonstrate that the fears expressed by organized labor can be alleviated, although we question the wisdom of doing so.

The second argument, which claims that State and local law enforcement has proven sufficient, was adequately rebutted at the hearing held by this subcommittee on December 10, 1981. Witness after witness related instances of union violence that went unabated because of the inability or unwillingness of State and local authorities to act. Local and State officials are often hesitant to seek prosecution of union officials and agents because of their political and financial powers. Further, without Federal jurisdiction, States are limited in dealing with labor violence which adversely affects interstate commerce.

Statistics in the 1980 annual report of the Bureau of Alcohol, Tobacco and Firearms of the U.S. Treasury Department graphically depict the increasing problem. Property damage from labor-related bombing incidents in 1980 was over $1.1 million. This represents a 78-percent increase from 1979. Property damage where the motive was extortion was over $3 million in 1980.

Finally, the Hobbs Act itself is recognition that Congress was dissatisfied with the State and local prosecution of extortion. The Supreme Court of the United States, in *United States* v. *Culbert*, acknowledged this fact. Although the case did not involve a labor dispute, the Court, in an unanimous opinion, discussed the reason for passage of the Hobbs Act and its attendant extension of Federal jurisdiction over activities that may have been punishable under State law. "Congress apparently believed . . . that the States had not been effectively prosecuting robbery and extortion affecting interstate commerce and that the Federal Government had an obligation to do so." This logic becomes more compelling in a situation involving a labor dispute, where State and local authorities are less inclined to become involved.

FEDERAL COURTS REJECT *ENMONS* "END JUSTIFIES THE MEANS" RATIONALE

There has been a growing recognition by the Federal courts that union members or officers who engage in violent activity should be subject to Federal criminal sanctions notwithstanding the objective of the actors. The ninth circuit court of appeals recently reinstated a criminal indictment against union members who, during a labor dispute, followed the employer's moving vans around the country and engaged in repeated acts of violence, including the use of explosives to damage and destroy the trucks.

In this case, *United States* v. *Thordarson,* the union defendants argued that their conduct should not be exposed to Federal prosecution because the violence occurred during the course of a recognitional strike, which constitutes a legitimate labor dispute. The argument prevailed in the lower court, which dismissed the charges based on the authority of *United States* v. *Enmons.*

On appeal, the ninth circuit refused to extend the *Enmons* decision beyond the Hobbs Act, holding that no basis existed for expanding the *Enmons* "union immunity" doctrine to all Federal criminal statutes. The court reinstated the indictment.

The *Thordarson* holding does not, of course, eliminate the labor union exemption to Federal prosecution under the Hobbs Act. The indictment speaks to the use of explosives, violation of the Travel Act, and racketeering activity in violation of the Racketeer Influenced and Corrupt Organization Act.

The importance of the ninth circuit holding is the rejection of the policy arguments forwarded in *Enmons.* Thus, the court does not adopt the rationale that legitimate union objectives justify violent means, stating instead that:

> Nothing in the language or legislative history of Federal labor legislation suggests that Federal criminal statutes—enacted to supplement State criminal sanctions—should not similarly be available to punish union members and officials who try to achieve collective bargaining goals by means of the kind of violence charged in the indictment before us.

The *Thordarson* decision is a step forward in holding all persons accountable for their actions. However, it does not go far enough, being limited on its facts to activity involving arson or explosives. It is necessary to remove unions' immunity to Hobbs Act prosecution so that other forms of violent behavior can be outlawed.

CONCLUSION

The U.S. Chamber supports the concept of the legislative proposals which would eliminate the judicially created labor union immunity to Federal prosecution under the Hobbs Act for extortionate behavior. The chamber believes that no collective bargaining objective justifies violence which threatens life or property, and that the use of violence during a labor dispute is contrary to the public interest.

The Hobbs Act is a Federal criminal statute. As such, its prohibitions are incorporated into S. 1630, a bill which would codify, revise, and reform all Federal criminal statutes, and upon which we have done a great deal of work.

S. 1630 is pending full Senate consideration. If passed in current form, it would codify the interpretation given to the Hobbs Act by the Supreme Court in *United States* v. *Enmons*. We believe that the Court's interpretation of legislative intent as expressed in passage of the Hobbs Act was wrong. To codify that misinterpretation, to give it the sanction of the Congress of the United States compounds that wrong.

Senator Grassley, Republican of Iowa, has filed an amendment to sections 1721 and 1722 [the Hobbs provisions] of S. 1630, which will be considered during floor debate of the Criminal Code reform bill. This amendment presents an ideal opportunity for the Senate to reaffirm its original intent in passing the Hobbs Act.

The chamber strongly supports legislation, including the Grassley amendment, which would hold any and all parties who engage in violent conduct accountable for their criminal actions.

We look upon this proposed legislation as a necessary link, you might say, a closing of the circle of Federal law in dealing with violence in labor disputes, and we have civil provisions in our laws which deal with the subject.

We are able to go in on some occasions and obtain through the National Labor Relations Board injunctions against violent conduct. We have the right under civil provisions of the Taft-Hartley Act to seek damages for the losses or the damages which are caused by the violent acts.

This seems to us to be just and an essential link which hopefully would deter violence, major violence in the labor disputes, something that is definitely needed.

I would say in closing, Senator Mathias, that my own experience as a practicing management labor lawyer, is that the occurrence of violence in labor disputes certainly appears to be on the rise, and this law is very much needed in order to preserve the peace, not only at the bargaining table, but in labor disputes which arise out of bargaining as well as labor disputes which arise out of other circumstances.

It is not a drastic piece of legislation. It is not something that would be inconsistent with the whole pattern of State and Federal labor legislation which deals with this vital subject, and our national scene, and one we believe that all parties concerned should get behind.

It is a valuable piece of legislation which we hope will receive the favorable consideration of not only the subcommittee but the Congress.

Thank you, sir.

Senator MATHIAS. Thank you, Mr. Thompson.

We are glad that the author of this bill, Senator Grassley, has joined us.

Let me ask you just a couple of questions.

As to S. 613, it does more than reverse the *Enmons* case. It creates a new Federal crime, and I am wondering if the U.S. Chamber supports the whole thrust of S. 613 or would it prefer simply to see a reversal of *Enmons*?

Mr. THOMPSON. We support the full force of S. 613 as a practical matter, and we think the achievable legislation would be a reversal of *Enmons*.

Senator MATHIAS. Well, now, how would you answer the Department in their expression of concern that the provisions would work an expansion of Federal jurisdiction and would impose severe strain upon the Department because of its limited resources?

Mr. THOMPSON. Our answer would be that——

Senator MATHIAS. Having in mind that we are shrinking these departments, not expanding in this present budgetary crunch?

Mr. THOMPSON. Yes, sir.

I'd have to answer in two ways.

One is that as we shrink these departments, I hope we are eliminating less useful services perhaps some unneeded services, and not eliminating necessary governmental functions.

In a short term, I think there may be some merit to the argument that limited resources will have an effect on full enforcement of this law, the full law.

On the other hand, I think you have to look at laws, and I am presumptuous to say this, you having been here so long and knowing so much about the legislative process, you don't pass a law for the next 6 months.

This is something that hopefully will set national labor policies for a long time to come.

It is a necessary point in our labor laws that needs to be corrected. And it is one that, it seems to me, it would be difficult for anyone to oppose in principle, and that is that we stamp out violence.

My broader, perhaps philosophical answer to your question would be that hopefully if you put this statute on the books, it will deter, it will serve to deter violence and will reduce the need for the expenditure of resources either at the State or Federal level, because people will think twice before they will engage in violence during the course of labor disputes.

And I think it almost goes without saying that persons who are contemplating or about to commit a criminal act are deterred more by Federal criminal statutes than they are by State criminal statutes, even though I think very strongly that the New Federalism is a good way to go.

It has been proven over and over again that Federal laws in the labor field have more effect and are more enforceable and do accomplish the long-range objectives of industrial peace, than do State laws. And that doesn't mean I am for removal of all the right-to-work laws.

Senator MATHIAS. I didn't assume it did.

Now, would you further assume, or maybe I better not make assumptions, let me ask you, is it your position that as presently drafted, the *Enmons* provision of S. 613 clearly and specifically excludes minor acts of violence, or do you think we need to do something further to make that clear?

Mr. **Thompson**. If you feel the need to exclude minor acts of violence, then I think Senator Grassley's amendment is a proper way to go, and a necessary way to go.

I don't think that S. 613 clearly excludes.

Senator **Mathias**. You don't think it does?

Mr. **Thompson**. No, sir, I don't.

Neither do I think it necessarily needs to be excluded. I think as a practical matter in enforcement and processes, they would probably be excluded because I don't think the Federal Government would trouble itself with such things as really minor fisticuffs on picket lines.

But I would have to be honest and say to you, I don't think the statute, the bill is clear on that point. If it is clear at all, it is clear the other way.

Senator **Mathias**. In your statement, you say that the chamber believes that all parties to a labor dispute, employers, employees, and labor organizations, must be equally accountable under the law for injuries to the person or property of others inflicted by wrongful acts.

Mr. **Thompson**. Yes, sir.

Senator **Mathias**. Now, does this really mean that the chamber would not support a proposal that penalized certain conduct of labor but not management, and if that is what you really mean, how would you then respond to the contention of the opponents of this bill, that it is one-sided, since management would not be acting to obtain the property of another if it employed violence in the course of a labor dispute?

Mr. **Thompson**. Well, I think the bill is designed to attack or pinpoint a very real and serious problem in this country and that is, union violence in labor disputes.

I am not aware, I don't think anyone has really made a case for some of the problems on the other side.

We made the statement and we will stand by the statement that we feel that anyone whether it's management, labor employees, unions, anyone else, should be accountable for wrongful acts and violence.

My answer to the proposition that it is a one-sided bill is that it is a one-sided problem. And, indeed, it needs to be corrected.

If there is a case made for stamping out management violence in labor disputes, then I would have no problem or quarrel with a law which would—Federal law which would deal with that.

I am just not aware that there is a problem there. I don't know many businessmen who either themselves or through the employment of others, go about in any calculated way to commit violence.

I suppose you could say there is some minor violence on the other side on the picket line, on the part of employees, who might be trying to get through a picket line, to get to work, and if they are the aggressor, if they are the ones who bring about the violence, then they are to be held accountable.

If they are agents of the employer, and commit violence, the employer ought to be accountable for it, and I think under most laws would be.

Senator **Grassley**. Mr. Chairman, could I interject a thought?

Senator **Mathias**. I am going to yield to you, Senator Grassley.

You can say anything you like.

Senator **Grassley**. Thank you very much.

On that point, whether or not the legislation is evenhanded, it could be questionable in S. 613 the extent to which it is equally applicable to management and labor. I am not even sure what the intent of the main sponsor of the bill is.

But in regard to my amendment to the criminal code that deals with the same area, it is intended it be evenhanded.

Mr. **Thompson**. I think it is clear.

I think Senator Mathias asked me specifically about S. 613.

Senator **Grassley**. Then I would like to state that my amendment to the criminal code is meant to be evenhanded, equally applicable to management as well as labor and to the extent it isn't we are going to make it clear in the legislative history. The code also contains strikebreaking provisions as well, because we feel that interference with a strike is just as wrong as something labor might induce.

Mr. **Thompson**. As long as you're dealing with violence, destruction of property, those types of acts, we have absolutely no quarrel with that and we so stated in our prepared statement.

Senator **Mathias**. Do you have any further questions?

Senator **Grassley**. Yes; I do.

I have in front of me, just as one example, a bulletin that has gone out from the Amalgamated Clothing & Textile Workers Union, which refers to this as an anti-union legislation. It reads: "We must take immediate action. Now they want to make it easy to put union members like ourselves in Federal prisons when we exercise our rights to walk the picket line." This is an example of many things I could read into the record, so I would like to ask you, is it true as stated in a newsletter like this, that this legislation will encourage violence as a strikebreaking tactic by employers?

Mr. **Thompson**. This legislation encourage violence?

I stated, I think, before you came in the room, I think this legislation will go a long way toward deterring violence because the threat of Federal prosecution, I think, is a greater deterrent in most places throughout this country, than is the threat of State or local prosecutions.

In answer to Senator Mathias' question, what do you say about the potential for overburdening the Federal authorities who already are overburdened, I made the statement I think in the long run, if anything, it will relieve not only the Federal authorities, but State authorities of a lot of prosecutions that would have taken place otherwise because of this deterrent effect that this law will have.

I see this as a missing link in our comprehensive labor laws in this country, both Federal and State. I think it is a very, very needed piece of legislation for that reason.

Just to give you an idea, I don't know, I am not trying to be cute by bringing up the State of Maryland, but we recently went through a very violent strike in Baltimore involving the public utility over there, a construction company that was trying to perform construction work.

We got six State court injunctions in that dispute and finally we were able to get a Federal court injunction which brought things to a halt.

It is that kind of thrust or that kind of weight that the Federal enforcement authorities have that I think would come into play if you put this law into the books.

Senator **Mathias**. In another committee this morning, there is a hearing on the New Federalism. Maybe we should go over and repeat this testimony there.

Mr. **Thompson**. I thought about that, and I think you have gone so far in the labor field with Federal law, it is too late to turn it back.

Senator **Mathias**. I urge you to stop downstairs in room 3302, the Governmental Affairs Committee. They will be glad to hear from you.

Mr. **Thompson**. I think, if you don't mind, I will sit that one out.

Senator **Grassley**. I don't have any other questions of these witnesses.

But when they leave, I'd like to put a statement in the record.

Senator **Mathias**. I have no further questions.

Thank you very much.

Mr. **Thompson**. Thank you very much.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF ROBERT T. THOMPSON

My name is Robert T. Thompson. I am senior partner in the law firm of Thompson, Mann and Hutson of Washington, D.C. and Greenville, South Carolina. I am also Regional Vice Chairman of the Board of Directors of the Chamber of Commerce of the United States and serve as Chairman of its Labor Relations Committee. Accompanying me is Arthur F. Rosenfeld, a labor law attorney on the staff of the U.S. Chamber.

The U.S. Chamber is the world's largest business federation, representing more than 225,000 members, including over 220,000 business firms, 2,700 state and local chambers of commerce, and 1,300 trade and professional associations. Our members are greatly concerned with the effects of the judicially created loophole [1] in Section 1951 of Title 18 of the United States Code, commonly known as the Hobbs Act, and we welcome this opportunity to express support for a Hobbs Act Amendment.

The Chamber endorses legislation which prohibits extortionate acts of violence during a labor dispute. Violence, intimidation, and other coercive methods do not belong in labor disputes, are contrary to the public interest, and should be banned.

The effect of the 1973 Enmons holding was to create a position outside the law beyond the jurisdiction of federal authorities for labor unions which engage in threats of violence, or actual violence, in order to secure objectives such as increased wages or benefits. The Chamber believes that all parties to a labor dispute -- employers, employees, and labor organizations -- must be held equally accountable under the law for injuries to the person or property of others inflicted by wrongful acts. We are convinced that Congress intended, in passing the Hobbs Act, that extortionate acts which result in obstruction of interstate commerce constitute a federal offense, even though the illegal act may have been committed in order to obtain property or concessions which are legitimate objectives of collective bargaining.. Congress did not intend to deny to federal courts the power to interdict violent criminal acts simply because those acts are committed by persons participating or interested in a labor dispute.

The Hobbs Act

A. The Local 807 Case

The 1946 Hobbs Act, an amendment to the original federal anti-extortion statute known as the Anti-Racketeering Act of 1934, was passed in response to a Supreme Court interpretation of the earlier statute. In United States v. Local 807, International Brotherhood of Teamsters, [2] the Court overturned convictions of union members who, through use of violence or threats of violence as trucks entered New York City, obtained the equivalent of wages for driving and unloading the trucks from the owners, even though this work was not performed by the defendants. In effect, these illusory "wages" were paid by the owners, and received by the defendants, to guarantee safe passage into New York City.

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[1] United States v. Enmons, 410 U.S. 396 (1973).

[2] 315 U.S. 521 (1942)

[3] 18 U.S.S. § 1951.

The issue in Local 807 centered on a provision in the Anti-Racketeering Act which excluded from the Act's coverage "... the payment of wages by a bona-fide employer to a bona-fide employee." In the final analysis, the Local 807 decision eliminated the effectiveness of the 1934 Anti-Racketeering Act in regard to labor union violence. In addition, the opinion of the Court in Local 807 gave rise to a legacy which continues to limit the use of federal anti-extortion laws in situations involving labor unions. Specifically, the decision implies that legitimate ends justify violent means.

The 1946 Hobbs Act [3/] was a direct response by Congress to Local 807. The Act provides in pertinent part that:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherence of a plan or purpose to do anything in violation of this section shall be fined ... or imprisoned ... or both.
>
> (b) As used in this section --
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

The passage of the Hobbs Act was a clear repudiation of the Local 807 decision, and of the violent behavior practiced by the defendants in that case. However, in U.S. v. Enmons, the Court again misconstrued Congressional intent, rendering enforcement of the Hobbs Act impotent.

B. The Enmons Decision

During an economic strike, certain members and officers of the striking union were alleged to have committed five specific violent acts against the employer, the purpose of which were to strengthen the union's bargaining position. The charges included firing high powered rifles at Company transformers, draining oil from a Company transformer, and blowing up a Company transformer substation. These allegations certainly go beyond minor acts of picket line "animal exuberance" that the opponents to a Hobbs Amendment seem so interested in protecting. It is important that the case in which these acts of violence were averred, U.S. v. Enmons, be analyzed with the scope of the violence committed kept well in mind. Repeated references, by representatives of organized labor in testimony presented to this Committee on December 10, 1981, to spontaneous picket line "fistfights," are misleading. Proposed amendments to the Hobbs Act are not directed toward, and, indeed, have been carefully drafted to exclude, this type of minor, exuberant behavior.

The issue facing the Supreme Court in Enmons was whether the Hobbs Act proscribed the major acts of violence committed by the union for the purpose of forcing the Company to agree to wage and benefit demands at the negotiating table. Focusing on the word "wrongful" in the Hobbs Act's definition of extortion,[4] four members of the Court held that Congress intended that coverage of the Act be limited to situations where the object of the misconduct is wrongful, and where this object, as here, is a legitimate union goal such as higher wages and benefits, there is no "wrongful" taking of an employer's property. This judicial reasoning is the progeny of the "ends justifies the means" logic displayed by the Supreme Court in Local 807, the case that led to passage of the Hobbs Act.

It is of note that Mr. Justice Stewart's opinion for the Court in Enmons was written for a plurality of four. Mr. Justice Blackmun, concurring, found the legislative history to be confusing, and invited Congress to clarify the Act. The dissent by Mr. Justice Douglas, the only member of the Court who was sitting at the time of passage of the Hobbs Act, found the majority's reading of the legislative history to be unpersuasive. "The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the (Hobbs) Act."[5]

Need for Federal Jurisdiction

Opponents of an amendment to the Hobbs Act predicate their opposition on two basic arguments. First, they express concern that individuals, moved in the heat of the moment of a labor dispute to engage in a minor picket line incident such as fisticuffs, will be subjected to a federal felony prosecution for an expression of relatively harmless animal exuberance. The second argument questions the need for federal intervention, accompanied by stringent penalties, in labor disputes, where misconduct, it is claimed, is effectively policed by state and local authorities.

The simple response to the initial argument is that organized labor, the chief opponent, surely cannot oppose the prohibition of, in the most effective manner, violent, dangerous behavior, even when the objective of such behavior is a legitimate, traditional goal of collective bargaining. Permitting, indeed, condoning, personal violence or the destruction of property during a labor dispute negates the primary purpose of this nation's federal labor laws, that of insuring industrial peace. Certainly, the activities of the defendants in the Enmons case, firing rifles into and blowing up company property, cannot be labeled as minor, incidental behavior which is entitled to the imprimatur of the Congress and the courts of the United States.

Further, Hobbs can be amended so as to ameliorate concerns regarding the imposition of federal jurisdiction for minor acts of misconduct erupting during a labor dispute. For example, Senator Grassley (R-Iowa) has filed an amendment to §§ 1721 and 1722, which are the extortion sections of S. 1630, commonly referred to as the "Criminal Code Reform Bill." Senator Grassley's amendment, which would eliminate the Hobbs Act exemption granted labor organizations by the Enmons decision, specifically excludes from federal jurisdiction minor acts of misconduct incidental to picketing, and also establishes a requisite amount of property damage, below which federal jurisdiction would not be invoked.

4/ 18 U.S.C. § 1951(b)(2) - defines extortion as "... the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear ..." (emphasis added)

5/ U.S. v. Enmons, 410 U.S. 396, 418.

Representative Sensenbrenner (R-Wis.) recently introduced a criminal code reform proposal, H.R. 5679, which permits federal prosecution for extortion only where the acts or threats of physical force or violence to a person or property constitute a criminal offense punishable by imprisonment for a period greater than two years in the State, district, or territory in which the acts occurred. The proposals offered by Senator Grassley and Representative Sensenbrenner demonstrate that the fears expressed by organized labor can be alleviated.

The second argument, which claims that state and local law enforcement has proven sufficient, was adequately rebutted at the hearing held by this Committee on December 10, 1981. Witness after witness related instances of union violence that went unabated because of the inability or unwillingness of state and local authorities to act. Local and state officials are often hesitant to seek prosecution of union officials and agents because of their political and financial powers. Further, without federal jurisdiction, states are limited in dealing with labor violence which adversely affects interstate commerce.

Statistics in the 1980 Annual Report of the Bureau of Alcohol, Tobacco and Firearms of the U.S. Treasury Department graphically depict the increasing problem. Property damage from labor related bombing incidents in 1980 was over 1.1 million dollars. This represents a 78% increase from 1979. Property damage where the motive was extortion was over 3 million dollars in 1980.

Finally, the Hobbs Act itself is recognition that Congress was dissatisfied with state and local prosecution of extortion. The Supreme Court of the United States, in U.S. v. Culbert, 6/ acknowledged this fact. Although the case did not involve a labor dispute, the Court, in a unanimous opinion, discussed the reason for passage of the Hobbs Act and its attendant extension of federal jurisdiction over activities that may have been punishable under state law. "Congress apparently believed ... that the States had not been effectively prosecuting robbery and extortion affecting interstate commerce and that the Federal Government had an obligation to do so." 7/ This logic becomes more compelling in a situation involving a labor dispute, where state and local authorities are less inclined to become involved.

Federal Courts Reject Enmons"End Justifies Means" Rationale

There has been a growing recognition by the federal courts that union members or officers who engage in violent activity should be subject to federal criminal sanctions notwithstanding the objective of the actors. The Ninth Circuit Court of Appeals recently reinstated a criminal indictment against union members who, during a labor dispute, followed the employer's moving vans around the country and engaged in repeated acts of violence, including the use of explosives to damage and destroy the trucks.

In this case, U.S. v. Thordarson, 8/ the union defendants argued that their conduct should not be exposed to federal prosecution because the violence occurred during the course of a recognitional strike, which constitutes a legitimate labor

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6/ 435 U.S. 371 (1978).

7/ U.S. v. Culbert, 435 U.S. 371, 380.

8/ 646 F.2d 1323 (CA 9, 1981).

dispute. The argument prevailed in the lower court, which dismissed the charges based on the authority of U.S. v. Enmons.

On appeal, the Ninth Circuit refused to extend the Enmons decision beyond the Hobbs Act, holding that no basis existed for expanding the Enmons "union immunity"doctrine to all federal criminal statutes. The Court reinstated the indictment.

The Thordarson holding does not, of course, eliminate the labor union exemption to federal prosecution under the Hobbs Act. The indictment speaks to the use of explosives,[9] violation of the Travel Act,[10] and racketeering activity in violation of the Racketeer Influenced and Corrupt Organization Act.[11]

The importance of the Ninth Circuit holding is the rejection of the policy arguments forwarded in Enmons. Thus, the Court does not adopt the rationale that legitimate union objectives justify violent means, stating instead that "Nothing in the language or legislative history of federal labor legislation suggests that federal criminal statutes - enacted to supplement state criminal sanctions - should not similarly be available to punish union members and officials who try to achieve collective bargaining goals by means of the kind of violence charged in the indictment before us."[12]

The Thordarson decision is a step forward in holding all persons accountable for their actions.[13] However, it does not go far enough, being limited on its facts to activity involving arson or explosives. It is necessary to remove unions' immunity to Hobbs Act prosecution so that other forms of violent behavior can be outlawed.

Conclusion

The U.S. Chamber supports the concept of the legislative proposals which would eliminate the judicially created labor union immunity to federal prosecution under the Hobbs Act for extortionate behavior. The Chamber believes that no collective bargaining objective justifies violence which threatens life or property, and that the use of violence during a labor dispute is contrary to the public interest.

The Hobbs Act is a federal criminal statute. As such, its prohibitions are incorporated into S. 1630, a bill which would codify, revise, and reform all federal criminal statutes. ②

S. 1630 is pending full Senate consideration. If passed in current form, it would codify the interpretation given to the Hobbs Act by the Supreme Court in U.S. v. Enmons. We believe that the Court's interpretation of legislative intent as expressed in passage of the Hobbs Act was wrong. To codify that misinterpretation, to give it the sanction of the Congress of the United States, compounds that wrong.

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[9] 18 U.S.C. § 844(i)

[10] 18 U.S.C. § 1952

[11] 18 U.S.C. § 1962(d)

[12] 646 F.2d 1323, 1331.

[13] See, e.g., Scott v. Moore, 640 F.2d 708 (CA5, 1981), rehearing en banc granted (August 31, 1981), wherein the Fifth Circuit upheld the imposition of a civil remedy, under a civil rights conspiracy statute (Ku Klux Klan Act, 42 U.S.C. 1985(3)), against a union and its officers and members for engaging in violence in the course of a labor dispute.

Senator Grassley (R-Iowa) has filed an amendment to §§ 1721 and 1722 (the Hobbs provisions) of S. 1630, which will be considered during floor debate of the "Criminal Code Reform" bill. This amendment presents an ideal opportunity for the Senate to reaffirm its original intent in passing the Hobbs Act.

The Chamber strongly supports legislation, including the Grassley amendment, which would hold any and all parties who engage in violent conduct, accountable for their criminal actions.

Senator MATHIAS. Senator Grassley?

Senator GRASSLEY. Mr. Chairman, I'm not going to read a long statement I have, but I would like to emphasize a couple points.

No. 1, I'd like to mention two premises that we have in my endorsing this legislation. The first is that the right of collective bargaining is definitively established in the American political legal tradition. This goes without saying. No chilling effect on legitimate labor activity is sought through the enactment of this bill.

I have in front of me some newsletters that I previously have read and one of them has this quote, that it would put union members in Federal prisons when they exercise their rights by walking the picket line.

And, of course, I feel that statement is untrue. S. 613 is designed to insure that the use of violence for coercive purposes for those representing management as well as representatives of labor, is covered under the Hobbs Act.

Then I would also like to state that I certainly do not see how the application of the Hobbs Act to labor disputes is a Federal intrusion into the State legal powers. We are simply trying to apply Federal extortion law in an even-handed manner, extortion involving interstate commerce is already a Federal crime, and this bill would bridge the gap that exists in current Federal law.

Then I also want to quote for the record as a way of emphasizing something that Senator Strom Thurmond has said in regard to this matter:

> In reality, State and local authorities are not equipped or strongly motivated to deal with the consequences of clashes between powerful competing interest groups within their communities.
>
> This is particularly true with labor disputes, a subject that is long in almost preemptive Federal involvement. Indeed, the political implications may be overwhelming to a local official who appears to take sides in a labor dispute by vigorous enforcement of criminal laws.
>
> I am sure the most comfortable position is one of noninvolvement.

I want to say that I agree with Senator Thurmond's analysis of this bill.

I will put the rest of my statement in the record.

Senator MATHIAS. The statement will be reported in the record as if read.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

I am here to express my strong support for the objective that S. 613 seeks to achieve. As a demonstration of this support, I have filed an amendment, numbered 1335 to the proposed Criminal Code revision. This amendment would revise the judicial interpretation of the Hobbs Act in United States v. Enmons, and make clear that the Hobbs Act punishes the actual or threatened use of force or violence regardless of the objective but expressly exempts minor conflicts that sometimes erupt on the picket line.

Now, I am starting from two premises in endorsing this legislation. First, the right of collective bargaining is definitively established in the American political and legal tradition. No chilling effect on legitimate labor activity is sought through enactment of this bill. I have in front of me a newsletter that states that supporters of this bill want to (quote) "put union members in federal prison when they exercise their rights by walking a picket line."

This statement is untrue. S. 613 is designed to ensure that the use of violence f0r coercive purposes by those representing management, as well as by those representing labor, is covered under the Hobbs Act.

The bill is not intended to reach the kinds of minor and incidental, but nevertheless unfortunate, conduct that sometimes occurs in the course of a labor dispute.

It is true that labor violence like any other violence or property destruction is illegal under state law. But many instances of labor violence involve perpetrators and evidence that is found in a number of states. The resources of the Federal Government are best suited to combat widespread crime. Also, a uniform law and uniform prosecution throughout the country would be in the best public interest, as it would do a much better job of curtailing such violence.

I certainly do not see the application of the Hobbs Act to labor disputes as a federal intrusion into State police powers. We are simply trying to apply Federal extortion law in an evenhanded manner. Extortion involving interstate commerce is already a Federal crime. This bill would breach the gap that exists in current federal law.

I think that the strongest argument for Federal jurisdiction over labor extortion was made by the sponsor of S. 613, Senator Strom Thurmond, when he stated:

> "in reality, State and local authorities are not equipped or strongly motivated to deal with the consequences of clashes between powerful competing interest groups within their communities. This is particularly true with labor disputes--a subject that has a long and almost preemptive federal involvement. Indeed the political implications may be overwhelming to a local official who appears to take sides in a labor dispute by vigorous enforcement of the criminal laws. I am sure the most comfortable position is one of noninvolvement."

I agree with Senator Thurmond's analysis of the problem. While I do have some misgivings concerning the sanctions scheme set out in S. 613 as well as the lack of explicit language exempting minor conflicts, I do want to once again express my strong support for the ultimate objectives of the bill.

Senator **Mathias**. Our next witness is John Charles Houston, director of congressional affairs, Public Service Research Council. Mr. Houston, as I said to Mr. Thompson, your statement will appear in full.

STATEMENT OF JOHN CHARLES HOUSTON, DIRECTOR OF CONGRESSIONAL AFFAIRS, PUBLIC SERVICE RESEARCH COUNCIL

Mr. **Houston**. Thank you, Senator Mathias.

I am John Charles Houston, and I am an attorney. I am the Director of Congressional Affairs for Public Service Research Council.

I want to thank the Subcommittee on Criminal Law for the opportunity to testify today and for the ongoing interest in labor union extortion, as shown by this second day of hearings on the subject.

Public Service Research Council is the Nation's largest citizens' group opposed to special privileges for public sector unions. We particularly oppose special privileges that benefit no one but union officials. We have a million members throughout the United States who contribute to our research and lobbying efforts.

Two years ago, discussion of the Hobbs Act arose in connection with the Criminal Code. At that time, we alerted our members to the issue. We told them the Senate version of the Criminal Code in the 96th Congress would, in effect, create a bar to Federal prosecution for extortion committed by unions, while extortion by any other person or group could be prosecuted under Federal law.

Our members at the time responded en masse. Never before have we had such an outpouring from them against a Federal bill as we did over this one. Our members, who are citizens from all walks of life, including many union members, do not want union crimes of extortion excluded from Federal prosecution while extortion by anyone else can be prosecuted. Since then, we have supported strong Federal laws to prosecute extortion wherever it arose—whether as some variation of the Criminal Code or in S. 613.

The issue presented by this bill is the same today as it was when Congress debated the Hobbs bill in 1945. The issue presented is: Should union crimes of extortion be exempt from Federal prosecution? Congress emphatically said no when it passed the Hobbs Act in 1945. The lawmakers designed the act to put union extortion back under Federal prosecution after the Supreme Court exempted most union extortion from Federal prosecution under the Anti-Racketeering Act in 1941. Congress wanted a strong Federal law to prosecute all extortion affecting interstate commerce, no matter who committed it—a law that would include union extortion.

But in 1973, the Supreme Court, in *United States* v. *Enmons*, again exempted most extortion by unions from Federal prosecution under the Hobbs Act. We find most Americans are surprised to find unions and union members excluded, in most cases, from a law that applies to everyone else. We find this offends most people's sense of equal justice under law.

Nine years have elapsed since that decision, and Congress has done nothing to mend this giant loophole created by the Supreme Court—a loophole the Hobbs Act was expressly designed to plug the first time the Supreme Court exempted union extortion from

Federal prosecution. Through the years, bills have been introduced to plug this loophole. But this is the first time such a bill has gotten a hearing. But then, the committees having jurisdiction of this issue, who were beholden to the unions, have—until recently—been disinterested. Now it seems lawmakers with a true sense of justice have come to the fore. And we express our gratitude to them for their support in giving this issue a fair hearing.

At the last hearing, Mr. Laurence Gold of the AFL-CIO spent an hour and a half belittling the union extortion problem. He manipulated data published by the Bureau of Alcohol, Tobacco, and Firearms to make it appear that union extortion is far less common than it really is. He talked about the number of bombings that occur each year and the number that can be identified as labor-related. He made a big "to-do" about the small percent of bombings each year that are labor-related. What he conveniently chose to ignore—while looking at the number of labor-related bombings—was the amount of damage those bombings do. Labor-related bombings, according to the BATF, account for only 4.3 percent of all bombings where a motive can be identified. But they account for almost a third, 31 percent—of the property damage done by all those bombings. Looking at things the way Mr. Gold does, vandalism causes most of the bombings in this country—37.4 percent of all bombings of known motive. But bombings by vandals only account for 2.8 percent of the property damage caused by all those bombings.

Even more disturbing, where extortion itself was the motive, extortion led all other motives as the No. 1 cause of property damage through bombing, where the motive could be identified in 1980. Extortion bombings were three times greater than even labor related bombings and did, as Mr. Thompson mentioned, over 3 million dollars' worth of property damage in 1980.

Extortion in 1980 accounted for almost half of all property damage by bombings from a known native in this country. In fact, if you add the two figures together of bombings attributed to labor-related incidents and bombings attributed to extortion, you come up with a figure that is nearly two-thirds, or 66 percent, of all known motives in terms of total property damage.

So we feel this is a very severe problem. We feel it is one that the American people deserve a serious answer to.

Mr. Gold also conveniently failed to mention the huge jump in labor-related bombings from 1979 to 1980, as shown by BATF figures. Labor-related bombings damaged almost twice the amount of property in 1980 as it did in 1979—destroying well over a million dollars' worth of property in 1980.

Federal law, as it now stands, does not deal effectively with extortion and violence by unions. Most union extortion, as the Supreme Court has interpreted the Hobbs Act, is exempt from Federal prosecution. The National Labor Relations Act governs private sector labor relations, but the act in no way effectively addresses, much less controls, extortion and violence by unions. Indeed, the harshest penalty the National Labor Relations Board imposes on a union for violence is a requirement that the union post a notice that they have committed acts of violence and will refrain from doing so in the future.

Much of the union violence and extortion does not even fall under the National Labor Relations Act. The testimony of Alan Ross for Associated Builders and Contractors showed that. It drew a grim picture of violence orchestrated by unions to further their economic interest where no employee has ever been asked to sign a card asking for union representation. In those cases, under Federal law, no bargaining relationship and no contract even existed between the employer and union.

Congress regulates private sector labor relations in almost all respects. It owes the public—who is suffering from this union reign of terror and extortion—a clear criminal statute that punishes extortion by any person or group, including unions, no matter what the motive.

Public Service Research Council is particularly concerned about violence and extortion by public sector unions. It seems public employee unions, more and more, are violating State laws that forbid strikes. Last August, the Federal Air Traffic Controllers' Union broke a Federal law against strikes. These strikes sometimes involve incidents of violence and extortion that affect interstate commerce. In some cases, the strikes involve death threats on public employers, city water lines get broken, telephone and computer cables axed, medical equipment smashed. Nonstrikers have been beaten with baseball bats and their families threatened, homes and cars get firebombed, and shot at.

I would draw the attention of the committee and its staff to the booklet which the Public Service Research Council has published, entitled "Public Sector Union Filings."

I mention it at this time, because on the last day of hearings at least one Senator on the subcommittee said there was no problem, there was no labor union violence or extortion which the Federal Government needs to concern itself with.

I think a mere glance at this book will show that over the last 3 years, from which the clips are culled, that a very clear demonstration of public sector union violence is present and that public sector violence is used for extortionate purposes in the truest sense of the word.

Violence itself threatens the right and power of elected officials. Such acts are no less extortionate because they are directed against government.

It would seem that a very clear Federal interest exists in any such case where the National Guard is necessary to keep the peace.

But still another factor hampers State prosecution of public sector union violence: limited jurisdiction.

State and local jurisdiction stops at the boundary line. State laws may punish violence within a State. But they rarely touch sources of violence outside the State.

But most public sector unions have national affiliates. Those affiliates often help local unions conduct strikes. They provide strike action plans. They even send strike coordinators from regional or national offices.

States, due to limited jurisdiction, cannot effectively prosecute these persons or groups for violence they incite. For this reason, and those mentioned earlier, public sector union violence often goes unpunished.

If this bill—or the Grassley amendment to the Criminal Code—is enacted, the Federal Government will not be meddling in an endless number of local disputes between public employers and unions. First, for the Federal Government to get involved, there would have to be an incident of violence or extortion that affected interstate commerce. To prove a crime of extortion also requires several conditions. Among them: It would have to be established that the union or its agents were trying to get something they were not entitled to have under any State collective-bargaining law, by using or threatening to use illegal or criminal means.

The Supreme Court case, *United States* v. *Enmons,* which held that the Federal Government in most cases cannot prosecute violence and extortion by unions, was a 5-to-4 decision. In the dissenting opinion, Justice Douglas said:

> Seeking higher wages is certainly not unlawful. But using violence to obtain them seems plainly within the scope of extortion.

To put this issue in perspective, it should be remembered that if you or I as individuals threatened or carried out acts of violence against any level of government for our private gain, we would be summarily prosecuted for extortion. If, for example, I took a bomb to the base of the Washington Monument and threatened to blow it up unless elected officials granted me a certain sum of money, I would be committing extortion. It is our feeling that if a union does a similar criminal act, it should be treated on an equal basis—whether it is a public or private sector union.

This bill does not seek to single out union crimes for any special Federal penalties. The bill poses no threat to any lawful action by unions or anyone else. Unions will retain all the legal rights to bargain, lobby, campaign, picket—and even strike—that they now have. The bill simply puts unions under the same Federal law that governs all other Americans.

Representative Samuel Hobbs, author of the Hobbs Act, put it best during congressional debate over his bill. "Crime is crime," he said, "no matter who commits it, and robbery is robbery, and extortion, extortion, whether or not the perpetrator has a union card."

"Why does (organized) labor now seek to make itself above the law that applies to all others?" he asked. "Is there any reason why labor should be granted immunity from the penalties of the criminal law?"

"Unless crime be committed," he said, "no one can be hurt by any criminal law. 'The guilty flee when no man pursueth.' If labor is innocent, how can this bill hurt them? If guilty, why should they be the only class seeking immunity?"

On behalf of the 1 million members of the Public Service Research Council, I urge you to plug the loophole that now exists in the Hobbs Act—a loophole made by the Supreme Court in 1973 when it exempted most crimes of extortion committed by unions. I urge you to restore the Hobbs Act to read as Congress intended it in the first place. Congress passed that law to put crimes of extortion by unions back under Federal prosecution when the Supreme Court first exempted them in 1941.

This bill, S. 613, would restore the Hobbs Act. No person or group should be above a Federal law that applies to everyone else. I urge you to adopt this bill.

Senator **Mathias**. Thank you, Mr. Houston.

Now, you have referred to the 1980 annual report of the Bureau of Alcohol, Tobacco and Firearms.

What, to your understanding, is the practice of the Bureau in distinguishing between labor-related bombings and management-related bombings? Do they just refer to "labor bombings" regardless of who inspired them?

Mr. **Houston**. They refer to bombings that arise in a labor incident regardless of which party may have originated or carried out the act. I think the facts are very clear that the vast majority of those people who are being prosecuted for bombings are labor officials. I think that fact is——

Senator **Mathias**. So your assumptions are drawn on the charges and not on the statistics of the Bureau?

Mr. **Houston**. Well, if there is any clear and convincing evidence that this does not represent union activities, I would enjoy seeing it.

Senator **Mathias**. I am not asking you that.

I am asking whether your statement is based on the presumptions drawn from the Bureau's statistics, or whether you are reaching a conclusion based on who has been charged with crimes?

Mr. **Houston**. I am talking about who has been convicted of crimes. It is based on BATF figures.

Senator **Mathias**. But BATF figures don't say who is responsible. You are going outside those figures?

Mr. **Houston**. Yes, BATF figures.

Senator **Mathias**. I wanted to make that clear because the Bureau, to my understanding, did not distinguish between labor and management as the source of any particular incident.

Now, you cite several statistics of the Bureau, and specifically note that labor-related bombings were responsible for $1.1 million in property damage; now, on the basis of what you just told me, that really isn't a Bureau assumption, that is your assumption relating other facts.

Mr. **Houston**. The Bureau doesn't attempt to interpret any further than that line.

Senator **Mathias**. The point of this really is: do you know whether or not any of these incidents resulted in prosecutions under title 18, United States Code, section 844, which makes destruction of property by the use of explosives a Federal crime?

Mr. **Houston**. Yes, some of them have, undoubtedly.

Senator **Mathias**. Now, given the applicability of section 844, is there really a gap in law that S. 613 is needed to fill?

Mr. **Houston**. Well, there was enough of a gap for the *Thordarson* case to have to be appealed to the Supreme Court. I am not trying to apply the *Enmons* decision and what the effect of the *Enmons* decision has been to cloud precisely that issue in prosecutors' minds. But the issue is what the Federal jurisdiction is in a bombing case.

That, *Thordarson* v. *United States,* was a case where the participants were following trucks around the country blowing them up at their discretion. That very issue, whether or not it was Federal jurisdiction to prosecute had to be appealed to the Supreme Court.

And that was under other statutes. But the meaning was that *Enmons* itself had created the pretext through which all Federal jurisdiction had been dealt away with.

Senator MATHIAS. Now, as you say, there are other statutes that prohibit some of the acts that could not be prosecuted under the Hobbs Act after the *Enmons* decision. The destruction of property by explosives, commission of arson, racketeering, all of these, can be prosecuted under Federal law, even where prosecution couldn't be brought under the Hobbs Act, that is true, isn't it?

Mr. HOUSTON. Sure.

Senator MATHIAS. The use of violence to influence the outcome of a labor dispute is an unfair labor practice under the NLRA, isn't it?

Mr. HOUSTON. That is true.

Senator MATHIAS. So these acts could be enjoined by the NLRA and that injunction would be enforceable by both civil and criminal contempt, wouldn't it?

Mr. HOUSTON. My understanding from the testimony offered at the first day of the hearings and talking to other labor attorneys is that the most severe normal penalty that a union pays for engaging in violence is to be construed under extortion, under the NLRA, is the posting of a document.

As I mentioned in my testimony, that is a typical response.

Senator MATHIAS. I am not asking you for typical or normal. I am asking you for what is possible?

Mr. HOUSTON. That is my understanding, that is the maximum penalty so far as I understand it.

Senator MATHIAS. All right.

So then I ask you this question, is this current Federal involvement insufficient to deal with the problem of labor management violence?

Mr. HOUSTON. We believe it is.

I refer to Mr. Ross' testimony who appeared at the first day of hearings. He pointed out an incident where the National Labor Relations Act could not be viewed as having any jurisdiction because there was no contractual relationship, one, with the union, and the employer; two, no union cards had ever been even distributed to be signed.

In other words, the initiatory acts to bring into play Federal labor law in aid of its sanctions simply did not apply because the union was simply engaged in extorting the employer to sign a contract with no other contract with union members or any potential union members.

As a result, I—as I said in my testimony, there are a number of incidents both in the public sector and the private, particularly in the public sector, though, where the National Labor Relations Act plays no role in curbing violence. It is largely ineffective in addressing the issue of extortion, certainly by the public employees and a large degree by private employees.

Senator MATHIAS. Well, since we are under such a severe constraint of time, I am not going to debate it with you, even though it would be educational to me to get your thoughts and try to draw you out a little bit on it.

Let me just refer you to the *Thordarson* case, and put the opinion of the Court on the *Thordarson* case in the record, at this point, so that those who read the shortened record will be able to see what, at least, was in our minds as we had this exchange.

[The court case referred to above follows:]

UNITED STATES of America,
Plaintiff-Appellant,

v.

Sten THORDARSON, Martin Fry, Craig Dunbar, Martin Salgado, and Charles Wise, Defendants-Appellees.

No. 80–1239.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Sept. 17, 1980.

Decided May 20, 1981.

The Government appealed from order of the United States District Court for the

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returns for their audit potential. Susan Long has asserted, on the other hand, that the allegations of harm are inapplicable because the IRS presently screens returns for audit using DIF formulae constructed from Cycle 6 data and, in a lengthy discussion of statistical procedures, that the IRS's DIF system cannot be reconstructed in a way that will harm the IRS's enforcement activities.

Central District of California, Robert M. Takasugi, District Judge, 487 F.Supp. 991, dismissing ten-count indictment charging defendant union officials with use of explosives to damage vehicles in interstate commerce, travel in interstate commerce to commit arson, conversion of union funds, and conspiracy to conduct affairs of an enterprise through a pattern of racketeering activity. The Court of Appeals, Norris, Circuit Judge, held that: (1) defendants' activities, which were purportedly in pursuit of legitimate union objectives, were not exempt from the Travel Act, statute prohibiting conversion of union funds, or the Racketeer Influenced and Corrupt Organization Act, and (2) indictment adequately charged defendants with using union funds to destroy employer's trucks in violation of the Landrum-Griffith Act.

Reversed and remanded.

Pregerson, Circuit Judge, concurred in part and dissented in part and filed opinion.

1. Arson ⇐14

Conspiracy ⇐38

Explosives ⇐5

Fact that alleged activities of union leaders in conspiring to destroy employer's truck in an effort to coerce employer into recognizing the union were purportedly in pursuit of legitimate union objectives did not exempt the leaders from prosecution under statutes prohibiting use of explosives to damage vehicles used in interstate commerce, travel in interstate commerce to commit arson or conspiracy to conduct affairs of an enterprise through pattern of racketeering activity. 18 U.S.C.A. §§ 844(i), 1952, 1962(d); Labor-Management Reporting and Disclosure Act of 1959, § 501(c), 29 U.S.C.A. § 501(c).

2. Labor Relations ⇐395.1

While acts of violence directed at an employer during a strike may be found, in some circumstances, to restrain or coerce employees in exercise of their rights guaranteed under the National Labor Relations Act, they are not in and of themselves unfair labor practices; even to extent that federal labor laws do reach union violence to achieve collective bargaining objectives, they do not provide exclusive remedy for such violence. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157.

3. Labor Relations ⇐1058

Indictment charging union officials with using union funds to destroy employer's trucks in violation of statute prohibiting union officer or employee from converting union funds to his own use or use of another was not required to allege lack of union authorization or absence of good-faith belief in union benefits and, as the indictment adequately alleged fraudulent intent, its dismissal was erroneous. Labor Management Reporting and Disclosure Act of 1959, § 501(c), 29 U.S.C.A. § 501(c).

4. Labor Relations ⇐1058

Specific criminal intent to deprive union of its funds and conversion to defendant's own use or use of another are the two elements which Government must allege and prove, in addition to jurisdictional elements, in making out a violation of statute prohibiting a union officer or employee from converting union funds to his own use or use of another. Labor Management Reporting and Disclosure Act of 1959, § 501(c), 29 U.S.C.A. § 501(c).

Charles C. Wehner, Sp. Atty., Los Angeles, Cal., for plaintiff-appellant.

Jan Lawrence Handzlik, Stilz, Boyd, Levine & Handzlik, Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court for the Central District of California.

Before PREGERSON, FERGUSON and NORRIS, Circuit Judges.

NORRIS, Circuit Judge:

The government appeals from a district court order dismissing a ten-count indictment charging defendants with violating 18 U.S.C. §§ 1962(d), 1952, and 844(i), and 29 U.S.C. § 501(c). This court has jurisdiction under 18 U.S.C. § 3731. We reverse.

I. *Facts*

In 1978, the employees of the Redman Moving and Storage Company of Thousand Oaks, California, elected Teamsters Local 186 as their bargaining agent. When Redman refused to recognize the union, Local 186, aided by Teamsters, Local 389, called a strike against the company. During the time of the strike, Redman trucks in California, Arizona and Connecticut were damaged or destroyed.

In November of 1979, a ten-count indictment was filed in the United States District Court for the Central District of California, alleging that the defendants—all officers or employees of Local 186 or Local 389—conspired to destroy Redman trucks in an effort to coerce Redman into recognizing the Teamsters.

The indictment charges defendants with the use of explosives to damage vehicles used in interstate commerce in violation of 18 U.S.C. § 844(i)[1] (Counts 2 and 3); travel in interstate commerce to commit arson in violation of the Travel Act, 18 U.S.C. § 1952[2] (Counts 4 and 5); conversion of union funds in violation of 29 U.S.C. § 501(c)[3] (Counts 6 through 10); and conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. § 1962(d)[4] (Count 1).[5] The alleged pattern of racketeering included the conduct charged substantively in Counts 2 through 10.

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[1] 18 U.S.C. § 844(i) provides that:

> Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned . . . or fined . . . or both.

[2] 18 U.S.C. § 1952 provides in pertinent part that:

> (a) Whoever travels in interstate or foreign commerce, or uses any facility in interstate or foreign commerce, including the mail, with intent to . . . (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined . . . or imprisoned . . . or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

[3] Section 501(c) provides that:

> (c) Any person who embezzles or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined . . . or imprisoned . . . or both.

[4] Section 1962(d) provides:

> It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

Section 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

An "enterprise" as defined by § 1961(4) includes:

> any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

A "pattern of racketeering activity" as defined by § 1961(5):

> requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

"Racketeering activity" as defined by § 1961(1) includes:

> (A) any act or threat, involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment

[5] See note 5 on page 1326.

The district court dismissed all ten counts of the indictment. The RICO, Travel Act and explosives charges (Counts 1–5) were dismissed on the authority of *United States v. Enmons*, 410 U.S. 396, 93 S.Ct. 1007, 35 L.Ed.2d 379 (1973), which the district court read as "preclud[ing] federal prosecution for violent activity which occurs during the course of a legitimate labor dispute" absent specific authorization from Congress. *United States v. Thordarson*, 487 F.Supp. 991, 995 (C.D.Cal.1980). The conversion of union funds charges were dismissed for failure to allege essential elements of the offense.

II. *Counts 1 through 5:* United States v. Enmons

In *Enmons*, the defendants were striking union members charged with using violence to obtain higher wages and other employment benefits in violation of the Hobbs Act, 18 U.S.C. § 1951. The issue was whether acts of violence committed during a lawful strike for the purpose of inducing an employer's agreement to legitimate collective bargaining demands constituted extortion, defined by the Hobbs Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear." 18 U.S.C. § 1951(b)(2).[6]

In interpreting the statute, Justice Stewart, writing for the majority, focused on the word "wrongful," and reasoned that because it would be redundant to speak of "wrongful violence" or "wrongful force," Congress must have intended "wrongful" to limit the statute's coverage "to those instances where the obtaining of the property would itself be 'wrongful' because the extortionist has no lawful claim to the property." 410 U.S. at 400, 93 S.Ct. at 1009–1010. Accordingly, the Court held that violence to achieve legitimate union objectives is not within the Hobbs Act's prohibition because there is no "wrongful" taking of the employer's property when union members receive wages and benefits in exchange for genuine services bargained for by the employer.

The Court found support in the legislative history of the Hobbs Act for its interpretation of "extortion". The predecessor of the Act, § 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979, proscribed the exaction of valuable consideration by force, violence or coercion, but expressly excepted "the payment of wages by a bona-fide employer to a bona-fide employee." In enacting the Hobbs Act, Congress eliminated this express wage exception in response to the Supreme Court's decision in *United States v. Local 807*, 315 U.S. 521, 62 S.Ct. 642, 86 L.Ed. 1004 (1942). In that case, the Court had held that the wage exception immunized from prosecution under the Anti-Racketeering Act New York City truck drivers who "by violence and threats exacted payments for themselves from out-of-town truckers in return for the unwanted and superfluous service of driving out-of-

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for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... Section 1952 (relating to racketeering) .... and (C) any act which is indictable under title 29, United States Code, ... section 501(c) (relating to embezzlement from union funds).

[5] All defendants are charged with violating the Travel Act, RICO and 28 U.S.C. § 501(c). Only defendants Fry and Salgado are named in the explosives counts.

[6] 18 U.S.C. § 1951 provides in pertinent part:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined ... or imprisoned ... or both.

(b) As used in this section—

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

town trucks to and from the city." *Enmons*, 410 U.S. at 402, 93 S.Ct. at 1010. The *Enmons* Court, however, despite Congress' repeal of the express wage exception in enacting the Hobbs Act, read the legislative history as evidencing an intent to preserve an exemption for violence in pursuit of legitimate collective bargaining objectives. *Id.* at 404–07, 93 S.Ct. at 1012–1013. In particular, the Court pointed to assurances given during the floor debate that the Hobbs Act would not interfere with legitimate labor activity and that a simple assault during a strike would not become a federal crime under the Act. *Id.*[7]

The Court noted that the broad interpretation of extortion advanced by the government would reach "all overtly coercive conduct in the course of an economic strike ... [with the result that] [t]he worker who threw a punch on a picket line or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of twenty years' imprisonment and a $10,000 fine." *Id.* at 410, 93 S.Ct. at 1015. In rejecting this reading of the statute, the Court concluded:

> [I]t would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States.

Id. at 411, 93 S.Ct. at 1015.

The defendants contend that the effect of *Enmons* is to place violence during the course of legitimate strike activity beyond the reach of all federal criminal laws. We cannot agree. There is no basis in the Court's decision or its underlying rationale for the creation of an "*Enmons* doctrine" of immunity applicable to all federal criminal statutes.[8] We read *Enmons* as holding only that the use of violence to secure legitimate collective bargaining objectives is beyond the reach of the Hobbs Act.

[1] The Court's holding in *Enmons* turned on its reading of the specific language of § 1951—particularly the term "wrongful" in the definition of extortion—and its reading of the Hobbs Act's singular legislative history. By contrast, the defendants have not cited, and we have not found, anything in the statutory language or the legislative history of the Travel Act, RICO or § 844 of Title 18 which indicates that Congress intended to exclude from the reach of those statutes violence in the pursuit of legitimate union objectives. Indeed, our reading of those statutes suggests that Congress intended no such exemption.[9]

The Travel Act, on its face, applies to "[w]hoever travels in interstate ... commerce or uses any facility in interstate commerce ... with intent to ... promote, manage, establish, carry on ... arson in violation of the laws of the State in which committed or of the United States." 18 U.S.C. § 1952. Section 844(i) of Title 18 covers "[w]hoever maliciously damages or destroys, or attempts to damage or destroy, by means of explosive, any ... vehicle ... used in interstate commerce ... or in any activity affecting interstate ... commerce." RICO provides that it shall be unlawful to conspire "to conduct or participate ... in the conduct [of an] enterprise's affairs through a pattern of racketeering activity ...." 18 U.S.C. § 1962(c), (d). Racketeering activity includes "any act or threat involving ... arson ... which is chargeable under state law and punishable by imprisonment for more than one year; ... any act which is indictable under title 18, United States Code ... Section 1952 ... [and] any act which is indictable under Title 29, United States Code, ... Section 501(c)." 18 U.S.C. § 1961(1).

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[7] Justice Douglas, writing for the four dissenters in *Enmons*, contended that by repealing the wage exception in the Anti-Racketeering Act and by rejecting similar amendments, Congress intended to include within the ambit of the Hobbs Act the use of threats and violence to achieve legitimate, as well as illegitimate, labor objectives. 410 U.S. at 413–19, 93 S.Ct. at 1016–1019.

[8] We are unaware of any other case in which a criminal defendant has attempted to assert *United States v. Enmons* as a defense to a prosecution under a statute other than the Hobbs Act. *Cf. United States v. Parker*, 586 F.2d 422 (5th Cir. 1978), *cert. denied*, 441 U.S. 962, 99 S.Ct. 2408, 60 L.Ed.2d 1067 (1979) (affirming without discussion of *Enmons* a conviction under § 844(i) on facts virtually identical to the case *sub judice*); *United States v. Love*, 482 F.2d 213 (5th Cir.), *cert. denied*, 414 U.S. 1026, 94 S.Ct. 453, 38 L.Ed.2d 318 (1973) (same); *Langel v. United States*, 451 F.2d 957 (8th Cir. 1971) (affirming without discussion of *Enmons* a conviction of union members for possessing a prohibited firearm—a bomb—in violation of 26 U.S.C. § 5861(d) in connection with the destruction of an employer's truck during a bona fide labor dispute).

[9] The Travel Act includes within its definition of unlawful activity "extortion ... in violation of the laws of the State in which committed or of the United States." 18 U.S.C. § 1952(b)(2). Extortion chargeable under state law is also included in the definition of "racketeering activity" provided by RICO. In light of the emphasis in *Enmons* on the special characteristics

These statutes are written in general terms and make criminal the prescribed conduct without regard to the status or ultimate objectives of the person engaging in it.[18] *See, e. g., United States v. Roselli*, 432 F.2d 879, 885 (9th Cir. 1970), *cert. de-*

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of the crime of extortion, *see* discussion *infra*, its holding delimiting the scope of the Hobbs Act arguably should be extended to similarly limit the scope of the RICO and Travel Act extortion provisions. That issue, however, is not before us at this time.

[18] Thus, while the Travel Act was primarily directed at suppressing the unlawful local activities that provide organized crime with its source of funds, *see Legislation Relating to Organized Crime: Hearings on H. R. 468, H. R. 1246, etc., before Subcommittee No. 5 of the House Committee on the Judiciary*, 87th Cong., 1st Sess. (1961); *The Attorney General's Program to Curb Organized Crime and Racketeering: Hearings on S. 1653, S. 1654, etc., before the Senate Committee on the Judiciary*, 87th Cong., 1st Sess. (1961), its reach is not limited to the activities of organized crime. *See, e. g., United States v. Roselli*, 432 F.2d 879, 884–85 (9th Cir. 1970), *cert. denied*, 401 U.S. 924, 91 S.Ct. 883, 27 L.Ed.2d 828 (1971). Rather, the Act forbids persons from traveling interstate or using the facilities of interstate commerce to commit any of the offenses enumerated in § 1952(b). *See United States v. Nardello*, 393 U.S. 286, 293, 89 S.Ct. 534, 538, 21 L.Ed.2d 487 (1969). As this court observed in *United States v. Roselli, supra*, in rejecting the defendants' argument that their scheme to cheat at gin rummy was not within the reach of § 1952(b)(1),

> The words of Section 1952 are general; they contain no restriction to particular persons or to particular kinds of gambling, liquor, narcotics and prostitution offenses .... [A]s we read the legislative record, Congress meant exactly what the language of Section 1952 states—it deliberately chose to make the statute applicable generally, and without crippling restrictions, to any person engaged in any kind of illicit business enterprise in one of the four fields of activity specified in the statute, which experience showed to be those in which organized racketeers commonly engaged.

Id. at 885.

See also United States v. Barnes, 383 F.2d 287, 289 n.2 (6th Cir. 1967), *cert. denied*, 389 U.S. 1040, 88 S.Ct. 780, 19 L.Ed.2d 831 (1968); *United States v. Vespe*, 389 F.Supp. 1359, 1368–69 (D.Del.), *aff'd sub nom. United States v. Shaffer*, 520 F.2d 1369 (3d Cir. 1975).

The district court's conclusion that RICO does not apply because the "defendants have not engaged in any activities which constitute 'labor racketeering'" must be rejected for similar reasons. Although never clearly articulated, the defendants' theory appears to be that since the primary purpose of RICO is to rid legitimate organizations of the influence of organized crime, and since the defendants' conduct was not alleged to be in aid of organized crime nor part of a "racketeering scheme" as that term is most commonly used, RICO does not reach the defendants' conduct.

This circuit has squarely held, however, that RICO does not require that the defendants be engaged in "organized crime." *United States v. Campanale*, 518 F.2d 352, 363 (9th Cir. 1975), *cert. denied*, 423 U.S. 1050, 96 S.Ct. 777, 46 L.Ed.2d 638 (1976). *See also United States v. Grande*, 620 F.2d 1026, 1030 (4th Cir.), *cert. denied*, — U.S. ——, 101 S.Ct. 98, 66 L.Ed.2d 35 (1980); *United States v. Aleman*, 609 F.2d 298, 303–04 (7th Cir. 1979), *cert. denied*, 445 U.S. 946, 100 S.Ct. 1345, 63 L.Ed.2d 780 (1980); *United States v. Mandel*, 415 F.Supp. 997, 1018–20 (D.Md.1976); McCellan, *The Organized Crime Act (S. 30) or Its Critics: Which Threatens Civil Liberties?*, 46 Notre Dame Law. 55, 142–44 (1970). While Congress, in enacting RICO, focused on the type of activities commonly engaged in by organized crime, § 1962 of the Act was written to "make[s] unlawful such activities no matter who engages therein." *United States v. Campanale*, 518 F.2d at 363.

nied, 401 U.S. 924, 91 S.Ct. 883, 27 L.Ed.2d 828 (1971) (Travel Act); *United States v. Perrin,* 580 F.2d 730, 733 (5th Cir. 1978), *aff'd,* 444 U.S. 37, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979) (Travel Act); *United States v. Campanale,* 518 F.2d 352, 363–64 (9th Cir. 1975), *cert. denied,* 423 U.S. 1050, 96 S.Ct. 777, 46 L.Ed.2d 638 (1976) (RICO); *United States v. Field,* 432 F.Supp. 55, 57–58 (S.D. N.Y.1977), *aff'd,* 578 F.2d 1371 (2d Cir. 1978) (RICO). We consider it improbable that Congress, having determined that arson and the willful misuse of explosives constituted a sufficiently grave threat to persons and property to warrant the imposition of federal criminal sanctions, intended to make the imposition of such sanctions depend upon whether the person who willfully causes the fire or explosion did so for his own personal gain or for the gain of members of his union.

Nor do we consider the policy arguments advanced in *Enmons* applicable to this case. In *Enmons,* the Court focused on the special characteristics of the crime of extortion which embraces *any* act or threat of violence, however, minor, used to obtain the property of another. The underlying concern was that to apply a federal extortion statute in the context of the collective bargaining process would transform minor acts of labor violence punishable by state law into federal felonies, thus placing the federal government in the business of policing the routine conduct of strike activity.

There is little, if any, risk that the crimes charged in this indictment, if applied to labor violence, would involve the federal government in policing routine strike activity. The destruction of vehicles used in interstate commerce by means of explosives and travel in interstate commerce to commit arson are hardly the sorts of minor picket line violence that the *Enmons* Court feared would be transformed into federal crimes under the Hobbs Act.

Moreover, there is no basis for the contention that the indictment in this case constitutes an unintended incursion into state criminal jurisdiction. Both RICO and the Travel Act explicitly prohibit conduct also chargeable under state laws of arson. 18 U.S.C. § 1961(1); 18 U.S.C. § 1952(b)(2). In addition, the legislative history of 18 U.S.C. § 844 clearly shows that it was enacted in response to the perceived "absence of any effective state or local controls" over explosives. H.R.Rep.No.91–1549, 91st Cong. 2d Sess., *reprinted in* [1970] U.S.Code

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Nor did Congress intend to remove from the coverage of the Act behavior that would otherwise constitute "racketeering activity," as defined in § 1961(1), solely because it was not engaged in for personal profit. *See, e. g., United States v. Field,* 432 F.Supp. 55, 57–58 (S.D. N.Y.1977), *aff'd,* 578 F.2d 1371 (2d Cir. 1978).

Moreover, to create an exception for conduct that is not part of a "racketeering scheme," as that term may be commonly used, would create substantial uncertainty in the law and raise significant questions as to the constitutionality of the Act. In *United States v. Culbert,* 435 U.S. 371, 98 S.Ct. 1112, 55 L.Ed.2d 349 (1978), for example, the defendant argued that proof of "racketeering" was an element of a Hobbs Act violation. While acknowledging that the Hobbs Act was aimed primarily at racketeering activities, the Court rejected the defendant's argument, emphasizing that the Act was written in broad language and the legislative history revealed no intention to limit the statutory language. In addition, the Court noted that due process requires that a statute define the elements of a crime with sufficient clarity that "persons of common intelligence [will not] necessarily guess as to its meaning and differ as to its application." *Id.* at 374, 98 S.Ct. at 1114, *quoting Connally v. General Construction Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). Thus, the Court cautioned that serious due process problems would be raised if a general undefined term like "racketeering" was read into the statute. *Id.* 435 U.S. at 374, 98 S.Ct. at 1114.

Like the Second Circuit, we are not unmindful that "the potentially broad reach of RICO poses a danger of abuse where the prosecutor attempts to apply the statute to situations for which it was not primarily intended." *United States v. Weisman,* 624 F.2d 1118, 1123 (2d Cir.), *cert. denied,* —— U.S. ——, 101 S.Ct. 209, 66 L.Ed.2d 91 (1980), *quoting United States v. Huber,* 603 F.2d 387, 395–96 (2d Cir. 1979). We, too, "caution against undue prosecutorial zeal in invoking RICO." *Id.* The defendants in this case, however, would have us substitute their own definition of racketeering for the one provided by § 1961 of the Act. This we cannot do.

Cong. & Ad.News at 4007, 4013. *See also United States v. Dawson,* 467 F.2d 668, 671–73 (8th Cir. 1971), *cert. denied,* 410 U.S. 956, 93 S.Ct. 1427, 35 L.Ed.2d 689 (1972). Thus, to the extent that this indictment, by reaching conduct also punishable under state law, represents an incursion into state criminal jurisdiction, it was an incursion plainly and deliberately undertaken by Congress.[11]

To uphold the dismissal of Counts 1 through 5, we would be required to create an exemption for labor violence that would necessarily be applicable to all federal criminal statutes. As counsel for the defendants candidly admitted during oral argument, if an "*Enmons* doctrine" were to immunize a union official from federal prosecution under the Travel Act or § 844(i), it would, in all logic, immunize from federal prosecution a union official—or, indeed, an employer—desperate enough to resort to kidnapping to achieve collective bargaining objectives. To carve out a narrow exemption from a federal extortion statute on the basis of its language and legislative history, as the Supreme Court did in *Enmons,* is one thing; to exempt a wide range of violent behavior from all federal criminal liability, despite plain language that prohibits such conduct, is quite another.[12]

[2] The defendants nevertheless contend that the federal regulation of labor union activities through a comprehensive scheme of predominantly civil remedies evidences a Congressional intent to exempt labor violence from federal criminal prosecution. This argument is without merit. The federal labor laws do not purport to govern all unlawful conduct engaged in by union members and officials. Thus, while acts of violence directed at an employer during a strike may be found, in some circumstances, to restrain or coerce employees in the exer-

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[11] The district court quotes *Rewis v. United States,* 401 U.S. 808, 812, 91 S.Ct. 1056, 1059, 28 L.Ed.2d 493 (1971), for the proposition that an "expansive interpretation of the Travel Act would alter sensitive federal-state relationships, [and] could over-extend federal police resources ...." In *Rewis,* the Court held that conducting a gambling establishment frequented by out-of-state bettors does not, without more, violate the Travel Act. In the recent case of *Perrin v. United States,* 444 U.S. 37, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979), however, the Court rejected a claim that the concerns for federalism expressed in *Rewis* require a narrow interpretation of the Travel Act. The issue in *Perrin* was whether the Travel Act proscribed commercial bribery that violated state law. In holding that it did, the Court noted that

> So long as the requisite interstate nexus is present, the statute reflects a clear and deliberate intent on the part of Congress to alter the federal-state balance in order to reinforce state law enforcement. In defining an "unlawful activity," Congress has clearly stated its intention to include violations of state as well as federal bribery law. Until statutes such as the Travel Act contravene some provision of the Constitution, the choice is for Congress, not the courts.

Id. 100 S.Ct. at 318.

[12] The district court below cited a number of circuit court decisions in support of an across-the-board exemption derived from *Enmons.* We find these cases inapposite. *United States v. Quinn,* 514 F.2d 1250 (5th Cir. 1975), *cert. denied,* 424 U.S. 955, 96 S.Ct. 1430, 47 L.Ed.2d 361 (1976), affirmed a conviction under the Hobbs Act for receiving payoffs from an employer in return for calling off a picket line at the employer's store. The court noted that although a bona fide labor dispute existed and the defendant was authorized to represent the employees, the payment was received in violation of § 302 of the Taft-Hartley Act and therefore could not be in pursuit of *legitimate* labor objectives. There was no discussion in *Quinn* of the applicability of *Enmons* to any federal statute other than the Hobbs Act.

United States v. Cerilli, 603 F.2d 415 (3d Cir. 1979), *cert. denied,* 444 U.S. 1043, 100 S.Ct. 728, 62 L.Ed.2d 728 (1980), affirmed a conviction under the Hobbs Act for extorting political contributions. The court noted that the *Enmons* decision was the result of the unique legislative history of the Hobbs Act and must be applied cautiously outside the labor context. *Id.* at 419–20. There is nothing in the Third Circuit's opinion to suggest that *Enmons* creates a general exemption from federal criminal law for violence in furtherance of legitimate labor goals. Similarly, the other cases cited by the district court provide no support for its holding that "absent specific authorization from Congress, *United States v. Enmons* precludes federal criminal prosecution for violent activity which occurs during the course of a legitimate labor dispute." *Thordarson,* 487 F.Supp. at 995.

cise of their rights guaranteed under § 7 of the National Labor Relations Act, *see e. g., NLRB v. Union Nacional de Trabajadores,* 540 F.2d 1 (1st Cir. 1976), *cert. denied,* 429 U.S. 1039, 97 S.Ct. 736, 50 L.Ed.2d 750 (1977); *NLRB v. United Mines Workers,* 429 F.2d 141, 147–48 (3rd Cir. 1970), they are not in and of themselves unfair labor practices. *Cf. Linn v. Plant Guard Workers,* 383 U.S. 53, 63, 86 S.Ct. 657, 663, 15 L.Ed.2d 582 (1966) (defamation arising during a labor dispute is not an unfair labor practice absent showing that it interfered with exercise of specific rights guaranteed under the National Labor Relations Act). Moreover, even to the extent that the federal labor laws do reach union violence to achieve collective bargaining objectives, it is clear that they do not provide the exclusive remedy for such violence. *See Linn v. Plant Guard Workers, supra; Auto Workers v. Wisconsin Board,* 351 U.S. 266, 272–73, 76 S.Ct. 794, 798–799, 100 L.Ed. 1162 (1956). Defendants concede, for example, that arson and the destruction of property by means of explosives may be prosecuted under state criminal laws whether or not those acts also constitute unfair labor practices.[13] Nothing in the language or legislative history of federal labor legislation suggests that federal criminal statutes—enacted to supplement state criminal sanctions—should not similarly be available to punish union members and officials who try to achieve collective bargaining goals by means of the kind of violence charged in the indictment before us.

The defendants' reliance on *United States v. DeLaurentis,* 491 F.2d 208 (2d Cir. 1974), is also misplaced. In *DeLaurentis,* the federal government invoked an 1870 civil rights statute to prosecute union officials for threatening and intimidating union members in violation of § 7 of the National Labor Relations Act, which gives an employee the right to refrain from engaging in concerted union activities. In reversing the conviction, the Second Circuit held that Congress did not intend § 7 violations to be enforced under the 1870 Civil Rights Act, 18 U.S.C. § 241,[14] but rather intended such violations to be enforced by the procedures and sanctions provided by the National Labor Relations Act. In this case, the undisputed availability of state criminal law demonstrates that the procedures and civil sanctions set forth in the National Labor Relations Act were not intended to be the exclusive means of regulating violence to achieve collective bargaining objectives. Moreover, in contrast to the broad language of the 1870 Civil Rights Act prohibiting persons from conspiring to "injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured him by the . . . laws of the United States," the language of the statutes involved in this appeal plainly and specifically reaches the acts of violence alleged in the indictment.

We therefore reverse the dismissal of Counts 1 through 5 of the indictment.

III. *Counts 6 through 10: the § 501(c) Violations*

The government also appeals from the district court's dismissal of Counts 6 through 10 of the indictment which charge the defendant with using union funds to destroy Redman trucks in violation of § 501(c) of the Landrum-Griffith Act, 29 U.S.C. § 501(c). Section 501(c) prohibits a union officer or employee from converting union funds to his own use or the use of another.[15]

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[13] State tort law may also be available to award compensation for damages resulting from violent conduct during the course of a strike. *See Automobile Workers v. Russell,* 356 U.S. 634, 78 S.Ct. 932, 2 L.Ed.2d 1030 (1958); *San Diego Unions v. Garmon,* 359 U.S. 236, 247–49, 79 S.Ct. 773, 780–782, 3 L.Ed.2d 775 (1959).

[14] Section 241 provides in pertinent part:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . . they shall be fined not more than $10,000 or imprisoned not more than 10 years.

The district court dismissed Counts 6 through 10, apparently for failure to allege essential elements of the offense. *See United States v. Thordarson,* 487 F.Supp. 991, 995–99 (C.D.Cal.1980). The district court held that the essential elements of § 501(c) include (1) a fraudulent intent to deprive the union of its funds and (2) either a lack of union authorization or an absence of a good faith belief in benefit to the union. *Id.* at 996–97. Not finding these elements alleged in the indictment,[16] the district court dismissed. *Id.* at 998–99.

[3] The government contends that the use of union funds for an illegal purpose constitutes a *per se* violation of § 501(c) under *United States v. Boyle,* 482 F.2d 755 (D.C.Cir.), *cert. denied,* 414 U.S. 1076, 94 S.Ct. 593, 38 L.Ed.2d 483 (1973). This court, like the court below, declines to follow *Boyle* and the *per se* rule it espouses. We nevertheless conclude that the district court erred in dismissing the indictment for failure to allege the essential elements of a § 501(c) offense. We hold that neither a lack of union authorization nor an absence of good faith belief in union benefit need be alleged in an indictment as essential elements of § 501(c), and that the indictment in this case adequately alleged fraudulent intent. We reverse, therefore, the district court's dismissal of Counts 6 through 10.

A. *United States v. Boyle*

The defendant in *Boyle* was convicted of violating § 501(c) by using union funds to make campaign contributions. The contributions were illegal under 18 U.S.C. § 610 (repealed Pub.L. No. 94–283, Title II, § 201(a), 90 Stat. 496 (1976)) which prohibited labor unions from contributing money to candidates for federal office. On appeal, the defendant challenged his conviction on two grounds. First, he contended that to convict under § 501(c) the jury must find either that the expenditure was made without union authorization or that the union derived no benefit from the expenditure. Second, he argued that § 501(c) was intended to punish only *knowingly* illegal or *ultra vires* expenditures. The Court of Appeals for the District of Columbia rejected both contentions.

The D.C. Circuit noted that "[n]o officer or union governing body could in all logic believe that a transfer for a criminal purpose was for a legitimate union purpose, was authorized by the union constitution or by-laws, or was for the union's benefit." *United States v. Boyle,* 482 F.2d at 765. Nor was there any "hint in either the statute or its legislative history that indicates a Congressional intent to excuse from the ambit of § 501(c) transfers for a criminal purpose." *Id.* The Court thus concluded "[i]f the use to which the money is knowingly transferred is unlawful, then the transfer constitutes a violation of § 501(c)." *Id.* at 764.

In this case, the union funds were allegedly used for the purpose of financing the destruction of Redman trucks. The government argues that since the expenditure was for an unlawful purpose the indictment is sufficient to state a § 501(c) offense under the *Boyle* decision. We, however, like the district court, find *Boyle* unpersuasive.[17]

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[15] For the text of § 501(c), *see* footnote 3, *supra.*

[16] In considering whether the indictment alleged these elements, the district court found that "[i]t is unlikely that there was a fraudulent intent to deprive the union of its funds"; that the expenditures were authorized under the unions' constitutions; that there was concededly "no evidence that union funds were used for the defendants' personal benefit"; and, following *Enmons,* that violent and illegal means used to achieve for legitimate union ends "are for the union's benefit." *United States v. Thordarson,* 487 F.Supp. 991, 998 (C.D.Cal.1980).

At issue at this stage of the litigation, of course, is the sufficiency of the indictment, not the sufficiency of the government's evidence. For example, the government contends that under the international union's constitution, the expenditures were not authorized.

Section 501(c) states a "larceny-type" offense. *United States v. Marolda*, 615 F.2d 867, 872–73 (9th Cir. 1980) (Judge Larson, concurring); *United States v. Silverman*, 430 F.2d 106, 126–27 (2d Cir.), *modified on other grounds*, 439 F.2d 1198 (1970), *cert. denied*, 402 U.S. 953, 91 S.Ct. 1619, 29 L.Ed.2d 123 (1971). Although the scope of criminal liability under § 501(c) extends beyond the common law offense of larceny and the old statutory crime of embezzlement, the essence of the § 501(c) crime, like the older crimes of embezzlement and larceny is the "tak[ing] [of] another's property . . . knowing that the other person would not have wanted that to be done." *United States v. Silverman*, 430 F.2d at 126–27; *United States v. Andreen*, 628 F.2d 1236 at 1241. Thus, it is well established that proof of a specific criminal intent to deprive the union of its funds is required to make out a § 501(c) violation.

The *Boyle* court, however, would in effect irrebuttably presume the requisite criminal intent where union funds are used for a criminal purpose. The effect of such an approach would be to impermissibly convert a "larceny-type" statute requiring a fraudulent intent to deprive the union of its funds into a statute subjecting individual officers and employees to criminal liability for union expenditures made for prohibited purposes.[18] In addition, such an interpretation would permit a conviction under § 501(c) without a finding by the trier of fact that the defendant has "taken another person's property . . . knowing that the other person would not have wanted that to be done." *United States v. Silverman*, 430 F.2d at 126–27. We conclude that such an approach improperly presumes an essential element of a § 501(c) offense. Accordingly, we decline to follow *Boyle*.

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[17] Although the district court found the *Boyle* decision "troubling", it sought to distinguish *Boyle* on its facts. *Boyle*, the district court found, involved an expenditure of union funds which was prohibited by criminal statute. In the present case, the specific *expenditure*—the reimbursement for expenses—was not prohibited by statute, only the eventual *use* of the money to destroy trucks was illegal, and so the district court held that *Boyle* did not apply. *Thordarson*, 487 F.Supp. at 997–98. We, however, find *Boyle* indistinguishable from the present case on its facts. The § 501(c) violation in *Boyle* involved a transfer from the United Mine Workers' (UMW) treasury to the UMW's legislative and lobbying arm. While the transfer was to facilitate the making of unlawful contributions, the transfer itself was not unlawful. *See id.* at 758–59 and n.8.

[18] The holding in *Boyle* converts § 501(c) from a "larceny-type" statute to a statute criminalizing union expenditures for certain purposes. Such a reading would make criminal certain breaches of fiduciary duty despite the absence of a specific intent to deprive the union of its funds. We find no support in the legislative history for such a reading of the statute.

First, the precursors to §§ 501(a) and 501(c) were added to the Act at different times. These precursors are first found in S. 1555, 86th Cong., 1st Sess. (1959). Section 109(a) of S. 1555, as reported from the Committee on Labor and Public Welfare on April 14, 1959, is almost identical to § 501(c). *See* 105 Cong.Rec. 5980 (1959). There was no federal fiduciary obligation in the bill at that time. *See* S.Rep.No. 187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. Code Cong. & Ad. News, 2318, 2376–77 (Minority views). A fiduciary obligation was added to the bill by an amendment proposed by Senator McClellan, 105 Cong.Rec. 6525, on April 23, 1959, as § 509, and later renumbered § 609. 105 Cong.Rec. 6523–28 (1959). The subsequent House Bill, H.R. 8342, included § 109(a) of S. 1555 almost verbatim as § 501(c), but strengthened the fiduciary obligation by replacing § 609 of S. 1555 with § 501(a). *See* 105 Cong.Rec. 15549–50 (1959) (remarks of Rep. Bolling); *Id.* at 15888 (text of H.R. 8342).

Second, the legislative history states that § 501(b), and not § 501(c), was meant to be the enforcement provision for § 501(a). The discussion of fiduciary duties in the analysis of H.R. 8342 discusses § 501(b) as the enforcement provision for § 501(a) and fails to mention § 501(c). *See* H.R.Rep.No. 741, 86th Cong., 1st Sess. (1959) *reprinted in* [1959] U.S. Code Cong. & Ad. News 2424, 2479–80 (Supplementary views). The Senate Republicans' remarks on the conference bill, reported by Senator Goldwater, state that the purpose of § 501(c) is to make embezzlement and other thefts of union funds federal crimes as well as state crimes, while the purpose of § 501(b) is to enforce the fiduciary duty of union officials. *See* 105 Cong. Rec. 19766 (1959) (remarks of Sen. Goldwater).

B. *The Essential Elements of § 501(c)*

Since it is not disputed that fraudulent intent is an element of § 501(c), we must consider whether lack of authorization and lack of good faith belief in union benefit are also elements of § 501(c). In two recent cases this circuit addressed this issue without totally resolving it. *United States v. Andreen*, 628 F.2d 1236, 1242 (9th Cir. 1980); *United States v. Marolda*, 615 F.2d 867, 869–70 (9th Cir. 1980).

In *Marolda*, the defendant was convicted of violating § 501(c) after the court's instructions to the jury failed to mention lack of authorization or lack of union benefit. The court reversed the conviction because of a prejudicial variance between the jury instructions and the language of the indictment, which had explicitly alleged both lack of authorization and lack of union benefit. *Id.* at 870. Thus the court was not required to reach the issue whether either or both are essential elements of § 501(c). Judge Larson, however, in a well-reasoned concurring opinion, addressed the issue and concluded that neither lack of authorization nor lack of union benefit is an essential element. *Id.* at 872. Rather, he wrote, both bear on the issue of criminal intent.

In *Andreen*, the court held that if the government established lack of authorization, it need not prove lack of union benefit.[19] 628 F.2d at 1242–43. The court expressly left open the issue now before us—whether the government must allege and prove lack of union benefit if it fails to establish lack of authorization—although in dictum it approved the position taken by Judge Larson in his concurring opinion in *Marolda*. *Andreen*, 628 F.2d at 1242. We also agree with Judge Larson and now hold that neither lack of authorization nor lack of good faith belief in union benefit is an essential element of § 501(c). Neither, therefore, need be alleged in the indictment, even though we recognize that evidence of either or both is likely to be admissible at trial as bearing on the issue of criminal intent to convert union funds to the defendant's own use or the use of another.

Section 501(c) is one of a number of statutes in which Congress has extended federal jurisdiction to cover common law theft crimes. As noted by Judge Friendly in *United States v. Silverman*, 430 F.2d at 126, the language of § 501(c) resembles the language of such "larceny-type" statutes as 18 U.S.C. §§ 641, 645, 655–61.[20] In determining the elements of § 501(c), we are strongly influenced by the doctrine of these other "larceny-type" statutes.

Judge Larson, in his concurrence in *Marolda*, suggests that Congress, in enacting § 501(c), "was merely transmuting common law theft crimes involving union funds and committed by union officers or employees into Federal crimes." 615 F.2d at 872. The Supreme Court has stated in dictum that 18 U.S.C. § 641 was intended to combine the common law theft crimes and also outlaw acts which might fall into the "gaps or crevices" separating those crimes. *Morissette v. United States*, 342 U.S. 246, 271, 72 S.Ct. 240, 254, 96 L.Ed. 288 (1952). As we read the legislative history of § 501(c), Congress' intent in passing it was the same as with § 641.[21] We see no evidence that Congress, in enacting § 501(c), intended to add any new elements to the common law theft offenses except those necessary to show federal jurisdiction and subject matter: that the accused is (1) an official or employee (2) of a labor organization (3) involved in interstate commerce, and that (4) the funds belong to the labor organization. *United States v. Bane*, 583 F.2d 832, 836 n.9 (6th Cir. 1978), *cert. denied*, 439 U.S. 1127, 99 S.Ct. 1044, 59 L.Ed.2d 88 (1979) (identifying the jurisdictional elements of § 501(c)); *Silverman*, 430 F.2d at 111 (same). Instead, as stated in *Morissette*, *supra*, Congress intended to simplify some of the technical requirements of the common law crimes.

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[19] The issue on appeal in *Andreen* was the sufficiency of the evidence for a conviction under 18 U.S.C. § 664. The court treated the case as though it were a § 501(c) conviction because § 664, which relates to employee welfare and pension plans, uses language that parallels § 501(c).

[20] The key language in 29 U.S.C. § 501(c) is "embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or to the use of another." The comparable language in 18 U.S.C. § 641 is "embezzles, steals, purloins, or knowingly converts to his use or the use of another"; the language in 18 U.S.C. § 656 and § 657 is "embezzles, abstracts, purloins, or wilfully misapplies.".

[21] The Senate Minority Report on S. 1555 states that § 109(a), the precursor to § 501(c), does nothing more than make the state crimes of embezzlement and theft federal crimes for union officials, and does not give union members any additional protection. S.Rep.No. 187,

[4] We therefore see no reason to add lack of authorization or lack of good faith belief in union benefit to the list of essential elements of § 501(c). Neither of the two has a counterpart in the elements of the common law theft crimes or of the other federal theft statutes.[22] "Congress subjected union officers or employees to the same test of criminal liability as government employees, bank officers and the like—not to a lower one." *Silverman*, 430 F.2d at 127. The two elements which the government must allege and prove, in addition to jurisdictional elements, in making out a § 501(c) violation, are the same as those announced by the Supreme Court for § 641: fraudulent intent and conversion to the defendant's own use or the use of another. *Morissette*, 342 U.S. at 271–72, 72 S.Ct. at 254.[23] *See also United States v. Durnin*, 632 F.2d 1297, 1300 (5th Cir. 1980).[24]

86th Cong., 1st Sess. (1959), *reprinted in* U.S. Code Cong. & Ad. News 2318, 2401 (Minority views, Appendix B). Senator Goldwater, commenting on this section, renumbered 209(a), stated that it merely created "concurrent jurisdiction" and was "like gilding the lily." 105 Cong.Rec. 10099 (remarks of Sen. Goldwater). We have found nothing in the legislative history to contradict these remarks. *See also* note 18 *supra*.

[22] The elements of embezzlement, when codified in a statute such as 18 U.S.C. § 641, are:

> (1) a trust or fiduciary relationship, (2) that the property claimed embezzled is embraced within the meaning of the statute, (3) that it came into the possession or care of accused by virtue of his employment, (4) it is property of another, (5) that his dealing therewith constituted a fraudulent conversion or appropriation of same to his own use, and (6) such was with the intent to deprive the owner thereof.

United States v. Powell, 294 F.Supp. 1353, 1355 (E.D.Va.1968), *aff'd*, 413 F.2d 1037 (4th Cir. 1969).

The elements of common law larceny are (1) a wrongful taking and carrying away (asportation), (2) of the personal property of another, (3) with the fraudulent intent to deprive the owner of his property without his consent. *United States v. Barlow*, 470 F.2d 1245, 1251 (D.C. Cir. 1972); *see also Morissette v. United States*, 342 U.S. 246, 267 n.28, 72 S.Ct. 240, 251–253 n.28, 96 L.Ed. 288 (1952). Larceny is usually incorporated in a federal theft statute in a broadened form by means of the words "steal" or "purloin": "Stealing, having no common law definition to restrict its meaning as an offense, is commonly used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another, and deprives the owner of the rights and benefits of ownership, but may or may not involve the element of stealth usually attributed to the word *purloin*." *Morissette*, 342 U.S. at 268 n.28, 72 S.Ct. at 251–253 n.28, *quoting Crabb v. Zerbst*, 99 F.2d 562, 565 (5th Cir. 1938). Conversion is even broader than stealing, since it can be accomplished without a wrongful taking (where the converter's initial possession was lawful) and without any intent to keep possession, so long as the property is misused or abused. *Morissette*, 342 U.S. at 271–72, 72 S.Ct. at 254.

Thus the addition of elements of lack of authorization or lack of union benefit is directly counter to the thrust of the federal theft statutes to eliminate the technicalities of the common law offenses. *See generally Id.* at 263–73, 72 S.Ct. at 249–255.

[23] Although *Morissette* does not explicitly state that conversion is an element of § 641, that is the effect of *Morissette's* reasoning. *Morissette* states that "[p]robably every stealing is a conversion," 342 U.S. at 271, 72 S.Ct. at 254, and then shows that a stealing is a conversion with the added elements of a wrongful taking and an intent to retain possession. *Id.* at 272, 72 S.Ct. at 254. Embezzlement and purloining, the other two offenses combined to make § 641, are also conversions with other elements added: to purloin is to steal with the element of stealth, *id.* at 268 n.28, 72 S.Ct. at 251–253 n.28, and conversion is an established element of embezzlement. *See, e. g., United States v. Powell*, *supra*, 294 F.Supp. at 1355. It is thus clear from *Morissette* that any violation of § 641 must involve a conversion.

[24] We recognize that there appears to be considerable support in other circuits for the de-

We do think that lack of authorization, lack of union benefit, and the defendant's failure to believe that there is authorization or union benefit, all are likely to bear on the essential element of fraudulent intent. *See Andreen*, 628 F.2d at 1242–43; *Marolda*, 615 F.2d at 873 (Larson, J., concurring). In a particular case, these factors may be crucial in determining the defendant's intent. In such a case, a jury instruction concerning them is likely to be appropriate.

For example, in this case, appellants are free to argue that they had no criminal intent because they believed that blowing up trucks conferred a benefit on the union and that the union, were it able to speak, would have wanted its money spent for such an unlawful purpose. The government can argue the contrary and in so doing is free to introduce evidence that destroying the trucks was unauthorized and did not work to the benefit of the union members as a whole. The trier of fact will then have to determine whether the government has proved its case that the defendants have "'taken another person's property . . . knowing that the other person

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fendant's position that there are additional essential elements to § 501(c)—although we note that those circuits fail to agree on what the additional elements are. The Sixth Circuit has adopted the view that § 501(c) does not require a showing of lack of authorization or lack of union benefit, but does require a showing of fraudulent intent and a lack of good faith belief in authorization and union benefit. *United States v. Bane*, 583 F.2d 832 (6th Cir. 1978), *cert. denied*, 439 U.S. 1127, 99 S.Ct. 1044, 59 L.Ed.2d 88 (1979). The Fifth Circuit has held that the elements of § 501(c) include fraudulent intent and either actual lack of authorization or lack of a good faith belief in union benefit. *United States v. Dixon*, 609 F.2d 827 (5th Cir. 1980); *see also United States v. Nell*, 526 F.2d 1223 (5th Cir. 1976) (fraudulent intent and lack of authorization sufficient). *But see United States v. Durnin*, 632 F.2d 1297, 1300 & n.5 (5th Cir. 1980) (suggesting that authorization is irrelevant if fraudulent intent is "thoroughly established"). The Eighth Circuit agrees that fraudulent intent and lack of authorization are sufficient, but has reserved the issue as to what elements in addition to fraudulent intent are required if the expenditure is authorized. *United States v. Goad*, 490 F.2d 1158 (8th Cir.), *cert. denied*, 417 U.S. 945, 94 S.Ct. 3068, 41 L.Ed.2d 665 (1974). Finally, the Second Circuit has held that the elements of § 501(c) are fraudulent intent and either lack of authorization (or ratification) or lack of good faith belief in union benefit. *United States v. Santiago*, 528 F.2d 1130, 1133–34 (2nd Cir.), *cert. denied*, 425 U.S. 972, 96 S.Ct. 2169, 48 L.Ed.2d 795 (1976). *But see United States v. Silverman*, 430 F.2d 106, 117–18, 126–27 (2nd Cir.), *modified on other grounds*, 439 F.2d 1198 (1970), *cert. denied*, 402 U.S. 953, 91 S.Ct. 1619, 29 L.Ed.2d 123 (1971) (Judge Moore suggests lack of actual union benefit, and not a lack of belief in union benefit, is required if authorization is present; Judges Friendly and Hays agree *arguendo*).

Like Judge Larson, we are "not certain why courts began to add new elements to § 501(c) crimes," *Marolda*, 615 F.2d at 873, but we suspect that the procedural posture of each case has had an effect. Ours appears to be the first case involving a government appeal from the dismissal of the indictment for failure to allege essential elements of the offense. Preceding § 501(c) cases have involved post-conviction appeals when issues relating to lack of authorization or lack of union benefit turned on the circumstances of the particular case, such as the jury instruction, or the evidence actually adduced at trial. *See, e. g., United States v. Dixon*, 609 F.2d 827 (5th Cir. 1980); *United States v. Nell*, 526 F.2d 1223 (5th Cir. 1976); *United States v. Ottley*, 509 F.2d 667 (2d Cir. 1975); *United States v. Bane, supra; United States v. Goad*, 490 F.2d 1158 (8th Cir.), *cert. denied*, 417 U.S. 945, 94 S.Ct. 3068, 41 L.Ed.2d 665 (1974).

For example, *United States v. Silverman, supra*, considered as the seminal case on the question of the elements of § 501(c), *see, e. g., Goad, supra*, and *Ottley, supra*, involved challenges both to the indictment and to the sufficiency of the evidence. The indictment in *Silverman*, like the indictment in the present case, merely tracked the language of § 501(c) and then gave the dates and amounts involved in the transaction underlying each count of the indictment. *Silverman*, 430 F.2d at 109–110. Neither lack of authorization nor lack of union benefit was specifically alleged. The indictment, challenged on other grounds, was upheld. Judge Friendly, however, writing for the majority, held that the evidence concerning an expenditure of union funds for a local political campaign was insufficient to sustain a § 501(c) conviction where the union had authorized the expenditure and the expenditure benefited the union. *Silverman*, 430 F.2d at 126–28. The discussion of authorization is confined strictly to the issue of the sufficiency of the evidence.

would not have wanted that to be done,'" *Andreen*, 628 F.2d at 1241, *quoting Silverman*, 430 F.2d at 126–27, and that "the 'union' presumably would have objected if it had been able to speak freely." *Silverman*, 430 F.2d at 127.

In conclusion, we hold that the indictment need merely allege fraudulent intent, and need not allege lack of authorization nor lack of belief in union benefit.

C. *The Sufficiency of the Indictment*

The district court in this case apparently held that the indictment was insufficient not only because it failed to set forth either lack of authorization or lack of good faith belief in union benefit, but also because it failed to adequately allege fraudulent intent. Upon review of the indictment, however, we find that fraudulent intent is adequately alleged.

Counts 6, 9, and 10 of the indictment allege that the defendants "did embezzle, steal, and unlawfully and wilfully abstract and convert to their own use and the use of another" the funds of the union. Counts 7 and 8 of the indictment allege that the defendants "did embezzle, steal and unlawfully convert to their own use and the use of another" the funds of the union. Language just like that in Counts 6, 9 and 10 has been held to constitute a sufficient allegation of criminal intent under § 501(c). *See Colella v. United States*, 360 F.2d 792, 798–99 (1st Cir.), *cert. denied*, 385 U.S. 829, 87 S.Ct. 65, 17 L.Ed.2d 65 (1966); *Doyle v. United States*, 318 F.2d 419, 420–22 (8th Cir. 1963). The word "wilfully," read in the context of the statutory language used in the indictment as a whole, is sufficient to allege the requisite criminal intent. *See United States v. Illinois Central Railroad Co.*, 303 U.S. 239, 242, 58 S.Ct. 533, 534–535, 82 L.Ed. 773 (1938) ("In statutes denouncing offenses involving turpitude, 'wilfully' is generally used to mean with evil purpose, criminal intent or the like").[25] The language in Counts 7 and 8, though less complete, adequately informs the defendants of the charges against which they must defend. *See Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct. 2887, 2907, 41 L.Ed.2d 590 (1974).

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

PREGERSON, Circuit Judge (concurring and dissenting):

Because section 501(c) of the Landrum-Griffin Act is expressly designed to regulate the conduct of union officials in the use of union funds, I agree that the district court erred in dismissing those counts of the indictment that charged violations of section 501(c), and join in Parts I and III of the court's opinion. I cannot agree, however, with the majority's view of the scope of *United States v. Enmons*, 410 U.S. 396, 93 S.Ct. 1007, 35 L.Ed.2d 379 (1973). I believe that the rationale animating *Enmons* precludes the application of RICO, the Travel Act, or 18 U.S.C. § 844(i) to violence incidental to a legitimate labor dispute. Accordingly, I dissent from Part II of the majority's opinion.

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[25] The district court, in discussing the fraudulent intent issue, stated that "[i]t is unlikely that there was a fraudulent intent to deprive the union of its funds because reimbursement for the expenses incurred in labor organizing, and particularly strike-oriented activities, are probably not for acts 'that the union would not have wanted ... done.'" *United States v. Thordarson, supra*, 487 F.Supp. at 998. This suggests that the district court may have dismissed the indictment not because the indictment failed to allege fraudulent intent, but because the court doubted that fraudulent intent could be proved at trial. If this was the district court's reasoning, it was in error. An indictment is sufficient if it adequately alleges the elements of the offense and fairly informs the defendant. *See Hamling v. United States, supra*, 418 U.S. at 117, 94 S.Ct. at 2907 *and United States v. Bailey*, 444 U.S. 394 at 414, 100 S.Ct. 624 at 636, 62 L.Ed.2d 575. The strength of the government's case is not at issue. However difficult it may be to prove fraudulent intent on the facts of this case, the government is entitled to an opportunity to present its proof.

The government admitted at oral argument that unless this circuit follows the rule in *United States v. Boyle, supra* (fraudulent intent is presumed where the union funds are spent for an unlawful purpose), the government has little hope of establishing criminal intent in this case. We have declined to follow *Boyle*. We do not, however, interpret the government's statement as a concession that we can appropriately reverse the district court only if we decide to follow *Boyle*. The government's underlying contention is that the indictment sufficiently alleged all of the elements of § 501(c). We hold that the indictment is indeed sufficient. If the government concludes that it does not have adequate proof of fraudulent intent without use of the *Boyle* doctrine, it is free to use its prosecutorial discretion not to proceed on the § 501(c) counts.

The majority distinguishes *Enmons* from the case at bar by reading it as based on the specific language and legislative history of the Hobbs Act. I agree with the district court, however, that "it is inaccurate to so narrowly limit the case." *United States v. Thordarson*, 487 F.Supp. 991, 992–93 (D.C.C.D.Cal.1980). The Court in *Enmons* explicitly stated that even had the language and history of the Hobbs Act not precluded its application to violence during legitimate labor disputes, policy reasons would make such application improper. 410 U.S. at 411, 93 S.Ct. at 1015. The Court voiced its reluctance, absent unmistakably compelling statutory language, to conclude "that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes." Id. This policy is as appropriate here as in *Enmons* and counsels against extending RICO, the Travel Act, or section 844(i) to "the use of force to achieve legitimate collective-bargaining demands." 410 U.S. at 408, 93 S.Ct. at 1014.

The majority neglects this policy consideration. The only policy argument stated in *Enmons* that the majority acknowledges is that "the special characteristics of the crime of extortion" made the Court fear that applying the Hobbs Act to labor disputes risked transforming minor picket line violence into federal crimes. The majority scarcely recognizes that applying the Travel Act or RICO to labor disputes creates the same risk, since extortion is one of the "unlawful activities" to which the Travel Act applies and is included in RICO's definition of "racketeering activity."[1]

More serious, however, is the majority's failure to appreciate that the *Enmons* decision rests not solely on the interpretation of the particular statute involved there, but on a broad, historically justified concern that the federal government not intrude into the business of policing the orderly conduct of legitimate labor disputes. Punishing lawlessness perpetrated during labor disputes has historically been and should continue to be the province of the States and their law enforcement authorities. I therefore respectfully dissent from Part II of the court's opinion.

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[1] The Travel Act penalizes anyone who travels in interstate commerce with intent to carry on an "unlawful activity" and does thereafter carry on such activity. 18 U.S.C. § 1952(a)(3). And it includes extortion in its definition of "unlawful activity." 18 U.S.C. § 1952(b). RICO prohibits "racketeering activity" in various contexts, 18 U.S.C. § 1962, and extortion chargeable under state law is explicitly included in the definition of such activity. 18 U.S.C. § 1961(1)(A).

The majority does acknowledge this problem but suggests that *Enmons* "arguably should be extended to . . . limit the scope of the RICO and Travel Act extortion provisions." Majority Opinion, note 9. This concession makes it clear that *Enmons* cannot be read as based solely on the legislative history of the Hobbs Act.

Senator **Mathias**. Would you think that S. 613 would make it a Federal crime to interfere with interstate commerce by inflicting or by threatening bodily injury? Given the broad reach of the commerce clause, this could make murder, it could make aggravated assault a Federal crime in many cases.

Do you have to go that far just to reverse that much?

Mr. **Houston**. Certainly not.

Senator **Mathias**. No. 1, would it?

Mr. **Houston**. Would 613 go beyond that?

Senator **Mathias**. Make murder under these circumstances a Federal crime?

Mr. **Houston**. No. I think that is a good question.

What it is doing is making only the act of extortion, per se. If murder is incident of evidence of extortion, or a result of extortion, that is what the bill is trying to address. But you are not going to be convicting people of murder.

Senator **Mathias**. The bill says whoever in anyway or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce,

Mr. **Houston**. Right.

But I think what we are talking about is the act of extortion.

Senator **Mathias**. Well, no, what we are talking about, the next line is "inflicting or threatening to inflict death or serious bodily injury to any person."

Mr. **Houston**. Yes.

Senator **Mathias**. Yes.

Mr. **Houston**. OK.

Let me make two statements. You have a good point.

There is no question 613 goes beyond a bare reversal on that. If people are committing murder, mayhem, property damage, in the course of a labor dispute or any other subject where the Federal Government has highly regulated the issue as they have in the subject of labor, it seems fair to me we provide some defense to those who are participants in the act to the public from their own public servants to the degree they engage in this sort of activity.

I say, yes, it may very well go beyond *Enmons* and may well go to crimes that are not now being prosecuted.

Senator **Mathias**. Like Mr. Thompson, I am going to invite you to go down to room 3301, the Governmental Affairs Committee, and the hearing on the New Federalism, and I think you ought to expand on the Federal role.

They are not hearing that down there from other witnesses, I have a feeling.

Mr. **Houston**. I will beg off this morning, but will take that under advisement.

Senator **Mathias**. That is only a fifth floor statement.

Senator Grassley, do you have any questions?

Senator **Grassley**. Yes.

Mr. Houston, the people who are opposed to this bill both within and outside of the Congress say one of the reasons that this bill shouldn't be passed is that no cases have been proven that haven't been adequately handled by State enforcement officers, and I would think that we ought to be able to show numbers of instances where the State enforcement officers in law haven't adequately handled the situation.

Can you help us in that direction?

Mr. HOUSTON. We could, certainly.

I mentioned during my testimony the book that we produced on public sector union violence. The vast majority of which involved cases of overt violence by public employees, violence of a nature that was recorded and which overwhelmingly was not prosecuted. The reason it is not prosecuted is because the initial response to the union once called on the carpet is, "We will stop doing this violent activity and we will stop, in the case of an illegal strike, we will stop striking if you will forgive us," so the first requirement is amnesty; and the public official who is confronted by that has one of two choices.

They can either persist in not giving amnesty and simply trying to curtail the violence in whatever form, it occurs on their own, or they can say, "Stop doing whatever you're doing, and we will forgive you," so the public officials are between a rock and a hard spot.

And in the vast majority of these cases, they are not prosecuted because of the close political association between the union, the public official, and the enforcement. In some cases they are the same people. You have got policemen breaking the laws. Who is going to investigate that?

And so this book will give you a good road map and it is only the tip of the iceberg, I assure you.

Senator GRASSLEY. What, generally, do you think of the affirmative defense that is set out in the bill, and more importantly, my amendment to the Criminal Code?

Mr. HOUSTON. We think that it provides a very clear statement that people who engage in first amendment rights present their side of a strike where it is legal through picketing, through making signs, through peaceful demonstrations, are not going to be in any danger of anything. There is a lot of scare talk that is running around by the unions that, you know, we are about to be set upon by the Federal Government for picking up a sign and going out on a picket line.

That is simply not true, and what that defense says is, anybody who is simply exercising those rights is clearly not going to be prosecuted, even to the degree that minor violence occurs.

To the degree that it becomes something more than that, where extortion becomes a factor, that defense would not apply. And even giving a property damage limit, I believe, of $1,000, that gives plenty of arm-swinging room for the broadest interpretation of first amendment rights.

We think that is very, very fair.

Mr. GRASSLEY. Mr. Chairman, I don't have any further questions.

Senator MATHIAS. Thank you very much, Mr. Houston.

Mr. HOUSTON. Thank you.

Senator MATHIAS. We appreciate your being here.

[The prepared statement of Mr. Houston follows:]

PREPARED STATEMENT OF JOHN CHARLES HOUSTON

I THANK THE SUBCOMMITTEE ON CRIMINAL LAW FOR THE OPPORTUNITY TO TESTIFY TODAY AND FOR YOUR ONGOING INTEREST IN LABOR UNION EXTORTION--AS SHOWN BY THIS SECOND DAY OF HEARINGS ON THE SUBJECT.

PUBLIC SERVICE RESEARCH COUNCIL IS THE NATION'S LARGEST CITIZENS' GROUP OPPOSED TO SPECIAL PRIVILEGES FOR PUBLIC SECTOR UNIONS. WE PARTICULARLY OPPOSE SPECIAL PRIVILEGES THAT BENEFIT NO ONE BUT UNION OFFICIALS. WE HAVE A MILLION MEMBERS THROUGHOUT THE UNITED STATES WHO CONTRIBUTE TO OUR RESEARCH AND LOBBYING EFFORTS.

TWO YEARS AGO, DISCUSSION OF THE HOBBS ACT AROSE IN CONNECTION WITH THE CRIMINAL CODE. AT THAT TIME, WE ALERTED OUR MEMBERS TO THE ISSUE. WE TOLD THEM THE SENATE VERSION OF THE CRIMINAL CODE IN THE 96TH CONGRESS WOULD, IN EFFECT, CREATE A BAR TO FEDERAL PROSECUTION FOR EXTORTION COMMITTED BY UNIONS, WHILE EXTORTION BY ANY OTHER PERSON OR GROUP COULD BE PROSECUTED UNDER FEDERAL LAW.

OUR MEMBERS AT THE TIME RESPONDED EN MASSE. NEVER BEFORE HAVE WE HAD SUCH AN OUTPOURING FROM THEM AGAINST A FEDERAL BILL AS WE DID OVER THIS ONE. OUR MEMBERS, WHO ARE CITIZENS FROM ALL WALKS OF LIFE INCLUDING MANY UNION MEMBERS, DO NOT WANT UNION CRIMES OF EXTORTION EXCLUDED FROM FEDERAL PROSECUTION WHILE EXTORTION BY ANYONE ELSE CAN BE PROSECUTED. SINCE THEN, WE HAVE SUPPORTED STRONG FEDERAL LAWS TO PROSECUTE EXTORTION WHEREVER IT AROSE--WHETHER AS SOME VARIATION OF THE CRIMINAL CODE OR IN S 613.

THE ISSUE PRESENTED BY THIS BILL IS THE SAME TODAY AS IT WAS WHEN CONGRESS DEBATED THE HOBBS BILL IN 1945. THE ISSUE PRESENTED IS: SHOULD UNION CRIMES OF EXTORTION BE EXEMPT FROM FEDERAL PROSECUTION? CONGRESS EMPHATICALLY SAID NO WHEN IT PASSED THE HOBBS ACT IN 1945. THE LAWMAKERS DESIGNED THE ACT TO PUT UNION

EXTORTION BACK UNDER FEDERAL PROSECUTION AFTER THE SUPREME COURT EXEMPTED MOST UNION EXTORTION FROM FEDERAL PROSECUTION UNDER THE ANTI-RACKETEERING ACT IN 1941. CONGRESS WANTED A STRONG FEDERAL LAW TO PROSECUTE ALL EXTORTION AFFECTING INTERSTATE COMMERCE, NO MATTER WHO COMMITTED IT--A LAW THAT WOULD INCLUDE UNION EXTORTION.

BUT IN 1973, THE SUPREME COURT, IN U.S. V. ENMONS, AGAIN EXEMPTED MOST EXTORTION BY UNIONS FROM FEDERAL PROSECUTION UNDER THE HOBBS ACT. WE FIND MOST AMERICANS ARE SURPRISED TO FIND UNIONS AND UNION MEMBERS EXCLUDED, IN MOST CASES, FROM A LAW THAT APPLIES TO EVERYONE ELSE. WE FIND THIS OFFENDS MOST PEOPLE'S SENSE OF EQUAL JUSTICE UNDER LAW.

NINE YEARS HAVE ELAPSED SINCE THAT DECISION, AND CONGRESS HAS DONE NOTHING TO MEND THIS GIANT LOOPHOLE CREATED BY THE SUPREME COURT--A LOOPHOLE THE HOBBS ACT WAS EXPRESSLY DESIGNED TO PLUG THE FIRST TIME THE SURPREME COURT EXEMPTED UNION EXTORTION FROM FEDERAL PROSECUTION. THROUGH THE YEARS, BILLS HAVE BEEN INTRODUCED TO PLUG THIS LOOPHOLE. BUT THIS IS THE FIRST TIME SUCH A BILL HAS GOTTEN A HEARING. BUT THEN, THE COMMITTEES HAVING JURISDICTION OF THIS ISSUE, WHO WERE BEHOLDEN TO THE UNIONS, HAVE--UNTIL RECENTLY--BEEN DISINTERESTED. NOW, IT SEEMS LAWMAKERS WITH A TRUE SENSE OF JUSTICE HAVE COME TO THE FORE. AND WE EXPRESS OUR GRATITUDE TO THEM FOR THEIR SUPPORT IN GIVING THIS ISSUE A FAIR HEARING.

AT THE LAST HEARING, MR. VIC GOLD OF THE AFL-CIO SPENT AN HOUR AND A HALF BELITTLING THE UNION EXTORTION PROBLEM. HE MANIPULATED DATA PUBLISHED BY THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS, TO MAKE IT APPEAR THAT UNION EXTORTION IS FAR LESS COMMON THAN IT REALLY IS. HE TALKED ABOUT THE NUMBER OF BOMBINGS THAT OCCUR EACH YEAR AND THE NUMBER THAT CAN BE IDENTIFIED AS LABOR-RELATED. HE MADE A BIG "TO-DO" ABOUT THE SMALL PERCENT OF

BOMBINGS EACH YEAR THAT ARE LABOR-RELATED. WHAT HE CONVENIENTLY CHOSE TO IGNORE--WHILE LOOKING AT THE NUMBER OF LABOR-RELATED BOMBINGS--WAS THE AMOUNT OF DAMAGE THOSE BOMBINGS DO. LABOR-RELATED BOMBINGS, ACCORDING TO THE BATF, ACCOUNT FOR ONLY 4.3% OF ALL BOMBINGS WHERE A MOTIVE CAN BE IDENTIFIED. BUT THEY ACCOUNT FOR ALMOST A THIRD (31%) OF THE PROPERTY DAMAGE DONE BY ALL THOSE BOMBINGS. LOOKING AT THINGS THE WAY MR. GOLD DOES, VANDALISM CAUSES MOST OF THE BOMBINGS IN THIS COUNTRY--37.4% OF ALL BOMBINGS OF KNOWN MOTIVE. BUT BOMBINGS BY VANDALS ONLY ACCOUNT FOR 2.8% OF THE PROPERTY DAMAGE CAUSED BY ALL THOSE BOMBINGS. ①

MR. GOLD ALSO CONVENIENTLY FAILED TO MENTION THE HUGE JUMP IN LABOR-RELATED BOMBINGS FROM 1979 TO 1980, AS SHOWN BY BATF FIGURES. LABOR-RELATED BOMBINGS DAMAGED ALMOST TWICE THE AMOUNT OF PROPERTY IN 1980 AS IT DID IN 1979--DESTROYING WELL OVER A MILLION DOLLARS WORTH OF PROPERTY IN 1980.

FEDERAL LAW, AS IT NOW STANDS, DOES NOT DEAL EFFECTIVELY WITH EXTORTION AND VIOLENCE BY UNIONS. MOST UNION EXTORTION, AS THE SUPREME COURT HAS INTERPRETED THE HOBBS ACT, IS EXEMPT FROM FEDERAL PROSECUTION. THE NATIONAL LABOR RELATIONS ACT GOVERNS PRIVATE SECTOR LABOR RELATIONS, BUT THE ACT IN NO WAY EFFECTIVELY ADDRESSES, MUCH LESS CONTROLS, EXTORTION AND VIOLENCE BY UNIONS. INDEED, THE HARSHEST PENALTY THE NATIONAL LABOR RELATIONS BOARD IMPOSES ON A UNION FOR VIOLENCE IS A REQUIREMENT THAT THE UNION POST A NOTICE THAT THEY HAVE COMMITTED ACTS OF VIOLENCE AND WILL REFRAIN FROM DOING SO IN THE FUTURE.

MUCH OF THE UNION VIOLENCE AND EXTORTION DOES NOT EVEN FALL UNDER THE NATIONAL LABOR RELATIONS ACT. THE TESTIMONY OF ALAN ROSS FOR ASSOCIATED BUILDERS AND CONTRACTORS SHOWED THAT. IT DREW A GRIM PICTURE OF VIOLENCE ORCHESTRATED BY UNIONS TO FURTHER THEIR ECONOMIC INTERESTS WHERE NO EMPLOYEE HAS EVER BEEN ASKED TO sign a card asking for union representation. In those cases, under federal law, no bargaining relationship and no contract even existed between the employer and union.

Congress regulates private sector labor relations in almost all respects. It owes the public--who is suffering from this union reign of terror and extortion--a clear criminal statute that punishes extortion by any person or group, including unions, no matter what the motive.

Public Service Research Council is particularly concerned about violence and extortion by public sector unions. It seems public employee unions, more and more, are violating state laws that forbid strikes. Last August, the federal air traffic controllers' union broke a federal law against strikes. These strikes sometimes involve incidents of violence and extortion that affect interstate commerce. In some cases, the strikes involve death threats on public employers, city water lines get broken, telephone and computer cables axed, medical equipment smashed. Non-strikers have been beaten with baseball bats and their families threatened. Homes and cars get firebombed, shot at.

②

Violence against public employers is an attack on the government. It threatens the right and power of our elected public officials to govern. Such acts are no less extortion because they are directed against the government. But in many cases, those who commit these acts of violence and extortion get off scot-free. There are several reasons for that. In some cases, it's simply because evidence of crimes of violence and extortion by unions and union members is hard to get. In some cases, victims and witnesses fear union reprisals if they talk.

In other cases, public officials simply won't prosecute

PUBLIC SECTOR UNIONS--THEY SEE IT AS "POLITICAL SUICIDE" TO GO AFTER UNIONS THAT HAVE HIGH VISIBILITY AND POLITICAL CLOUT. SOME LAW ENFORCEMENT OFFICERS WON'T MOVE AGAINST UNION STRIKERS BREAKING LAWS--PERHAPS OUT OF SYMPATHY, FEAR, FRIENDSHIP OR MEMBERSHIP IN THE SAME UNION. IN SOME CASES, PUBLIC EMPLOYERS PROMISE UNIONS NO PROSECUTIONS AND NO REPRISALS IN RETURN FOR ENDING A STRIKE. IN THE CASE OF SOME STRIKES, LAW ENFORCEMENT BREAKS DOWN--LIKE WHEN POLICE OFFICERS STRIKE. DURING SOME POLICE AND FIREFIGHTERS' STRIKES, THE FEDERAL GOVERNMENT MUST SEND IN THE NATIONAL GUARD TO MAINTAIN ORDER AND PROTECT CITIZENS.⑦

BUT STILL ANOTHER FACTOR HAMPERS STATE PROSECUTION OF PUBLIC SECTOR UNION VIOLENCE: LIMITED JURISDICTION.

A STATE'S AND LOCAL JURISDICTION STOPS AT THE BOUNDARY LINE. STATE LAWS MAY PUNISH VIOLENCE WITHIN A STATE. BUT THEY RARELY TOUCH SOURCES OF VIOLENCE OUTSIDE THE STATE.

BUT MOST PUBLIC SECTOR UNIONS HAVE NATIONAL AFFILIATES. THOSE AFFILIATES OFTEN HELP LOCAL UNIONS CONDUCT STRIKES. THEY PROVIDE STRIKE ACTION PLANS. THEY EVEN SEND STRIKE COORDINATORS FROM REGIONAL OR NATIONAL OFFICES.

STATES, DUE TO LIMITED JURISDICTION, CANNOT EFFECTIVELY PROSECUTE THESE PERSONS OR GROUPS FOR VIOLENCE THEY INCITE. FOR THIS REASON, AND THOSE MENTIONED EARLIER, PUBLIC SECTOR UNION VIOLENCE OFTEN GOES UNPUNISHED.

IF THIS BILL--OR THE GRASSLEY AMENDMENT TO THE CRIMINAL CODE--IS ENACTED, THE FEDERAL GOVERNMENT WILL NOT BE MEDDLING IN AN ENDLESS NUMBER OF LOCAL DISPUTES BETWEEN PUBLIC EMPLOYERS AND UNIONS. FIRST, FOR THE FEDERAL GOVERNMENT TO GET INVOLVED, THERE WOULD HAVE TO BE AN INCIDENT OF VIOLENCE OR EXTORTION THAT AFFECTED

INTERSTATE COMMERCE. TO PROVE A CRIME OF EXTORTION ALSO REQUIRES SEVERAL CONDITIONS. AMONG THEM: IT WOULD HAVE TO BE ESTABLISHED THAT THE UNION OR ITS AGENTS WERE TRYING TO GET SOMETHING THEY WERE NOT ENTITLED TO HAVE UNDER ANY STATE COLLECTIVE BARGAINING LAW, BY USING OR THREATENING TO USE ILLEGAL OR CRIMINAL MEANS.

THE SUPREME COURT CASE, U.S. V. ENMONS--WHICH HELD THE FEDERAL GOVERNMENT IN MOST CASES CANNOT PROSECUTE VIOLENCE AND EXTORTION BY UNIONS--WAS A 5-4 DECISION. IN THE DISSENTING OPINION, JUSTICE DOUGLAS SAID: "SEEKING HIGHER WAGES IS CERTAINLY NOT UNLAWFUL. BUT USING VIOLENCE TO OBTAIN THEM SEEMS PLAINLY WITHIN THE SCOPE OF 'EXTORTION'."

TO PUT THIS ISSUE IN PERSPECTIVE, IT SHOULD BE REMEMBERED THAT IF YOU OR I AS INDIVIDUALS, THREATENED OR CARRIED OUT ACTS OF VIOLENCE AGAINST ANY LEVEL OF GOVERNMENT FOR OUR PRIVATE GAIN, WE WOULD BE SUMMARILY PROSECUTED FOR EXTORTION. IF, FOR EXAMPLE, I TOOK A BOMB TO THE BASE OF THE WASHINGTON MONUMENT AND THREATENED TO BLOW IT UP UNLESS ELECTED OFFICIALS GRANTED ME A CERTAIN SUM OF MONEY, I WOULD BE COMMITTING EXTORTION. IT IS OUR FEELING THAT IF A UNION DOES A SIMILAR CRIMINAL ACT, IT SHOULD BE TREATED ON AN EQUAL BASIS, WHETHER IT IS A PUBLIC OR PRIVATE SECTOR UNION.

THIS BILL DOES NOT SEEK TO SINGLE OUT UNION CRIMES FOR ANY SPECIAL FEDERAL PENALTIES. THE BILL POSES NO THREAT TO ANY LAWFUL ACTION BY UNIONS OR ANYONE ELSE. UNIONS WILL RETAIN ALL THE LEGAL RIGHTS TO BARGAIN, LOBBY, CAMPAIGN, PICKET--AND EVEN STRIKE--THAT THEY NOW HAVE. THE BILL SIMPLY PUTS UNIONS UNDER THE SAME FEDERAL LAW THAT GOVERNS ALL OTHER AMERICANS.

REPRESENTATIVE SAMUEL HOBBS, AUTHOR OF THE HOBBS ACT, PUT IT BEST DURING CONGRESSIONAL DEBATE OVER HIS BILL. "CRIME IS CRIME," HE SAID, "NO MATTER WHO COMMITS IT, AND ROBBERY IS ROBBERY, AND EXTORTION, EXTORTION, WHETHER OR NOT THE PERPETRATOR HAS A UNION CARD."

"WHY DOES (ORGANIZED) LABOR NOW SEEK TO MAKE ITSELF ABOVE THE LAW THAT APPLIES TO ALL OTHERS?" HE ASKED. "IS THERE ANY REASON WHY LABOR SHOULD BE GRANTED IMMUNITY FROM THE PENALTIES OF THE CRIMINAL LAW?"

"UNLESS CRIME BE COMMITTED," HE SAID, "NO ONE CAN BE HURT BY ANY CRIMINAL LAW. 'THE GUILTY FLEE WHEN NO MAN PURSUETH.' IF LABOR IS INNOCENT, HOW CAN THIS BILL HURT THEM? IF GUILTY, WHY SHOULD THEY BE THE ONLY CLASS SEEKING IMMUNITY?"

ON BEHALF OF THE ONE MILLION MEMBERS OF THE PUBLIC SERVICE RESEARCH COUNCIL, I URGE YOU TO PLUG THE LOOPHOLE THAT NOW EXISTS IN THE HOBBS ACT--A LOOPHOLE MADE BY THE SUPREME COURT IN 1973 WHEN IT EXEMPTED MOST CRIMES OF EXTORTION COMMITTED BY UNIONS. I URGE YOU TO RESTORE THE HOBBS ACT TO READ AS CONGRESS INTENDED IT IN THE FIRST PLACE. CONGRESS PASSED THAT LAW TO PUT CRIMES OF EXTORTION BY UNIONS BACK UNDER FEDERAL PROSECUTION WHEN THE SUPREME COURT FIRST EXEMPTED THEM IN 1941.

THIS BILL, S 613, WOULD RESTORE THE HOBBS ACT. NO PERSON OR GROUP SHOULD BE ABOVE A FEDERAL LAW THAT APPLIES TO EVERYONE ELSE. I URGE YOU TO ADOPT THIS BILL.

Senator **MATHIAS**. Let me ask Senator Grassley, since we both face this time problem of having to be on the floor, would you be available to remain here? I have to go to the floor when we get the live quorum call.

Senator **GRASSLEY**. We just got a message they are in the process of—I think that this is a start of a live quorum, although I turned my pager off. But I was going to go over and vote now. I could come back, except I do have Finance Committee, and that is going on right now. But I think that probably I could sit in on some of this. I really cannot give you a definite answer.

Senator **Mathias**. My problem is, I cannot come back. So it depends on you whether we can go on this morning.

If you have a commitment with the Finance Committee, I already explained to the witnesses that this is an unprecedented situation which has confronted us. Normally, we have notice that we can advise you of what our problems are.

This did not arise until after 6 o'clock yesterday evening on the Senate floor, so we are without notice ourselves that we would be in this bind.

Senator **Grassley**. I feel I have to be at the Finance Committee, so I suppose we have to cancel the meeting, then.

Senator **Mathias**. We will go on as long as we can.

Our next witness is Mr. John S. Legg, representative of the Universal Utility Contracting Co.

STATEMENT OF JOHN S. LEGG, UNIVERSAL UTILITY CONTRACTING CO., WOODINVILLE, WASH., REPRESENTING THE NATIONAL UTILITY CONTRACTORS ASSOCIATION

Mr. **Legg**. Mr. Chairman, my name is Steve Legg.

I am representing the National Utility Contractors Association and I am employed by the Universal Utility Contractors of Seattle, Wash.

I have come here today to present testimony to advocate substantive changes in the Hobbs Act. I am aware that speakers who have previously testified before this hearing have cited statistics and dollar figures in providing you with a general overview of the problems faced by American businessmen as a result of the wording of this Federal statute. In the testimony that follows, I feel that I can best present my argument by relating my own personal experience with the violent and unlawful activities to which my company and others were subjected in the fall of 1980 in Washington State.

The problems we encountered were a direct result of our failure to reach agreement on a new collective bargaining pact with the Teamsters, Laborers and Operating Engineers labor unions. Negotiations with union representatives commenced on or about May 1980, and continued on a sporadic basis until September of 1981, when an impasse was reached. During this period, our company was constructing new sewer pipelines in Aberdeen, Wash., a heavily unionized logging community. Prior to starting the project, we had been contacted several times by local business agents, who informed us that it would be to our advantage—and that things would go smoother—if our company signed a compliance agreement. We informed the business agents that we were in the midst of negotiations with the Operating Engineers and Laborers unions in Seattle and that we wished to await the outcome of those discussions.

One negotiating session that took place in Grace Harbor County, the site of our sewer job, left a deep impression on me. Representatives from our company and the Felton Construction Co. of Missoula, Mont., met with the Teamsters, operators and laborers at their invitation. The Felton Co. also had been awarded a major sewer job in Aberdeen. During the course of our talks, an assistant business manager for the District Council of Laborers responded to my comment that I didn't appreciate having an agreement "shoved down my throat." He responded, "Steve, I'm going to shove our agreement down your throat." This outburst signaled the end of that negotiating session, and it gave me the distinct impression that the unions with which we were dealing were not accustomed to contractors who did not submit to their terms and conditions.

I want to emphasize that, at no time, did the unions even attempt to discern whether our labor force desired to enlist any of the local unions to act as their representatives.

In the summer of 1980, Felton Construction started its sewer project at Aberdeen, and we were to begin our project about a month later. Due to the fact that neither company had reached any agreement with the unions, we felt that union-inspired problems may develop.

The Felton Co. was the initial target, as well as the local sand and gravel company which had agreed to supply both sewer contractors with trucking services and rock products. The management of this company had also been unsuccessful in its attempts to reach a fair agreement with the unions. The employers of both companies, and their wives and families, were subjected to verbal and physical abuse by union members and their sympathizers both during the day and in the evenings. Some of Felton's workmen were beaten and, in at least one instance, a man dining with his wife was attacked as they left a local restaurant. A number of drivers with the sand and gravel company were forced off the road by individuals in cars displaying guns. Nails were dumped on the roadway outside of the company's office, leading to a substantial tire repair bill.

As a result of the beatings, threats of bodily injury, harassment of wives and families and verbal abuse, many of Felton's employees quit. The prevailing attitude of these workmen was that it was not worth the daily risk of bodily harm to continue working. The Felton Co., however, did not quit. New employees were hired, and they obtained a court-issued restraining order against the union. Copies of affidavits taken to support the restraining order are available, Mr. Chairman, and if there is no objection, I would like to submit them for inclusion into the record at this time.

Another tactic employed by union members and their sympathizers was to travel in numbers to the various job sites, surround Felton Co. crew workers, shout obscenities at them and block the movement of their equipment so they were unable to work. The restraining order helped greatly in eliminating this type of activity. However, worker output decreased significantly and the Felton work force was visibly frightened.

The Universal Co. arrived in town about a month after the Felton Co. had begun its work. We had been warned by Felton management of what to expect from the unions. As a result, we hired a local detective agency—at a substantial unprojected cost—to patrol our work yard and check our equipment on the various job sites. During this time, rumors had been spread in this small town of some 30,000 inhabitants, and we were informed through various channels that our equipment would be dynamited and pipe material burned. Despite these threats, we began work on our project.

On or about October 10, 1980, a large group of approximately 150 gathered at our yard in the predawn hours. Our workmen were inside our fenced yard preparing for the day's work. The crowd outside was shouting and yelling obscenities. Numerous pickets were parading slowly in front of our gate. When our men began exiting the yard with their equipment and vehicles, the pickets and hecklers crowded together to prohibit our egress. Rocks were thrown at our equipment and truck windows and the crowd noise greatly increased.

There was no question that our people were upset and apprehensive. At that time, our supervisor instructed the men that there would be no work that day. Rocks were thrown into our yard, car and truck windows were broken, and tires slashed. Prior to and throughout this time, we had sought the assistance of the local police, the county sheriff, and the State patrol. It was evident to me that all were somewhat reluctant to involve themselves in what they referred to as a labor dispute. However, to their credit, they were able to stop a great deal of the obviously unlawful activity after the Felton Co. and ourselves had gone to the expense of obtaining a restraining order against the unions.

Because the Universal and Felton Cos. continued to work and ignore the turmoil instigated by the unions, taking our lumps and assuming the cost of security, the unions and their members apparently lost interest in continuing their tactics of harassment. Both contractors completed their contracts. However, our persistence was certainly not without substantial and unforeseen costs.

I would ask this committee to seriously consider legislation to prevent the type of irresponsible violence with which both the Felton and Universal Cos. had to contend in order to complete a public works project financed largely by the Federal Government.

The motto of the National Utility Contractors Association [NUCA] is "We Dig America"—a principle in which we fervently believe. However, when a sector of society, such as a labor union, is permitted to attempt to bully an employer into accepting a collective-bargaining agreement unsatisfactory to the employer and not approved by the employees, then we feel the ideals which led to the enactment of the National Labor Relations Act are perverted.

We feel that new legislation is necessary to protect both those employers and employees who sincerely want to remain unaffiliated with labor unions. Intimidation by any group against a person or persons is an unacceptable means of attaining its objectives.

Thank you for the opportunity to speak before you today.

Mr. Chairman, I have copies of affidavits that were taken in support of restraining orders we obtained at Aberdeen. I hope that you will accept them into the record.

I also have a compilation of newspaper articles from throughout the Nation regarding labor violence.

I ask that you also accept those into the record.

Thank you for the opportunity to speak.

Senator MATHIAS. Well, thank you very much, Mr. Legg.

The exhibits you have offered will be included as a part of the record.[1]

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[1] The affidavits and newspaper articles submitted by Mr. Legg can be found in the appendix.

In the light of the constraint of time and the fact that we are close to this live quorum, I am going to forego what would be for me the pleasure of questions and let your testimony rest on your statement.

Thank you very much.

[Witness excused.]

[The prepared statement of Mr. Legg follows:]

PREPARED STATEMENT OF JOHN S. LEGG

Mr. Chairman and distinguished members of the Committee, my name is Steve Legg. I am representing the National Utility Contractors Association and I am employed by the Universal Utility Contractors of Seattle, Washington.

I have come here today to present testimony to advocate substantive changes in the Hobbs Act. I am aware that speakers who have previously testified before this hearing have cited statistics and dollar figures in providing you with a general overview of the problems faced by American businessmen as a result of the wording of this federal statute. In the testimony that follows, I feel that I can best present my argument by relating my own personal experience with the violent and unlawful activities to which my company and others were subjected in the Fall of 1980 in Washington State.

The problems we encountered were a direct result of our failure to reach agreement on a new collective bargaining pact with the Teamsters, laborers and operating engineers labor unions. Negotiations with union representatives commenced on or about May, 1980, and continued on a sporadic basis until September of 1981, when an impasse was reached. During this period, our company was constructing new sewer pipelines in Aberdeen, Washington, a heavily unionized logging community. Prior to starting the project, we had been contacted several times by local business agents, who informed us that it would be to our advantage -- and that things would go smoother -- if our company signed a compliance agreement. We informed the business agents that we were in the midst of negotiations with the operating engineers and laborers unions in Seattle and that we wished to await the outcome of those discussions.

One negotiating session that took place in Grace Harbor County, the site of our sewer job, left a deep impression on me. Representatives from our company and the Felton Construction Company of Missoula, Montana, met with the Teamsters, operators and laborers at their invitation. The Felton Company had also been awarded a major sewer job in Aberdeen. During the course of our talks, an assistant business manager for the District Council of Laborers responded to my comment that I did not appreciate having an agreement "shoved down my throat." He responded, "Steve, I'm going to shove our agreement down your throat." This outburst signaled the end of that negotiating session, and it gave me the distinct impression that the unions with which we were dealing were not accustomed to contractors who did not submit to their terms and conditions.

I want to emphasize that, at no time, did the unions even attempt to discern whether our labor force desired to enlist any of the local unions to act as their representatives.

In the Summer of 1980, Felton Construction started its sewer project at Aberdeen, and we were to begin our project about a month later. Due to the fact that neither company had reached any agreement with the unions, we felt that union-inspired problems may develop.

The Felton Company was the initial target, as well as the local sand and gravel company which had agreed to supply both sewer contractors with trucking services and rock products. The management of this company had also been unsuccessful in its attempts to reach a fair agreement with the unions. The employers of both companies, and their wives and families, were subjected to verbal and physical abuse by union members and their sympathizers both during the day and in the evenings. Some of Felton's workmen were beaten and, in at least one instance, a man dining with his wife was attacked as they left a local restaurant. A number of drivers with the sand and gravel company were forced off the road by individuals in cars displaying guns. Nails were dumped on the roadway outside of the company's office, leading to a substantial tire repair bill.

As a result of the beatings, threats of bodily injury, harrassment of wives and families and verbal abuse, many of Felton's employees quit. The prevailing attitude of these workmen was that it was not worth the daily risk of bodily harm to continue working. The Felton Company, however, did not quit. New employees were hired, and they obtained a court-issued restraining order against the union. Copies of affidavits taken to support the restraining order are available, Mr. Chairman, and, if there is no objection, I would like to submit them for inclusion into the record at this time.

Another tactic employed by union members and their sympathizers was to travel in numbers to the various job sites, surround Felton Company crew workers, shout obscenities at them and block the movement of their equipment so they were unable to work. The restraining order helped greatly in eliminating this type of activity. However, worker output decreased significantly and the Felton work force was visibly frightened.

The Universal Company arrived in town about a month after the Felton Company had begun its work. We had been warned by Felton management of what to expect from the unions. As a result, we hired a local detective agency -- at a substantial unprojected cost -- to patrol our work yard and check our equipment on the various job sites. During this time, rumors had been spread in this small town of some 30,000 inhabitants, and we were informed through various channels that our equipment would be dynamited and pipe material burned. Despite these threats, we began work on our project.

On or about October 10. 1980. a large group of approximately 150 gathered at our yard in the predawn hours. Our workmen were inside our fenced yard preparing for the day's work. The crowd outside was shouting and yelling obscenities. Numerous pickets were parading slowly in front of our gate. When our men began exiting the yard with their equipment and vehicles, the pickets and hecklers crowded together to prohibit our egress. Rocks were thrown at our equipment and truck windows and the crowd noise greatly increased.

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Because the Universal and Felton companies continued to work and ignore the turmoil instigated by the unions, taking our lumps and assuming the cost of security, the unions and their members apparently lost interest in continuing their tactics of harrassment. Both contractors completed their contracts. However, our persistence was certainly not without substantial and unforeseen costs.

I would ask this committee to seriously consider legislation to prevent the type of irresponsible violence with which both the Felton and Universal companies had to contend in order to complete a public works project financed largely by the federal government.

The motto of the National Utility Contractors Association (NUCA) is "We Dig America" -- a principle in which we fervently believe. However, when a sector of society, such as a labor union, is permitted to attempt to bully an employer into accepting a collective bargaining agreement unsatisfactory to the employer and not approved by the employees, then we feel the ideals which led to the enactment of the National Labor Relations Act are perverted.

We feel that new legislation is necessary to protect both those employers and employees who sincerely want to remain unaffiliated with labor unions. Intimidation by any group against a person or persons is an unacceptable means of attaining its objectives. Thank you for the opportunity to speak before you today.

Senator **Mathias**. Our next witness is Mr. David Previant, the chief labor counsel of the International Brotherhood of Teamsters who, I understand, will be accompanied by Mr. Robert Baptiste.

STATEMENT OF DAVID PREVIANT, CHIEF LABOR COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY ROBERT BAPTISTE, COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. **Previant**. Good morning.

My name is David Previant. I am chief labor counsel of the International Brotherhood of Teamsters, and I am accompanied by Robert M. Baptiste, labor counsel for the International Brotherhood of Teamsters.

I have been a practitioner in the field of labor for over 47 years. I believe I have acquired some expertise in the area of the legislative process and the legislation that purports to correct evils which may have surfaced over a period of time. I know how that legislation has been perverted and distorted.

Our opinion is that although S. 613 may on its face appear to be a law against sin, it is not really that, but is a reversion to the pre-Wagner days of trial by combat when labor unions were fighting for recognition, and when they were denominated criminal conspiracies.

For that reason, it is extremely painful for me to watch this legislation drift through this Congress, on a tide of anti-union propaganda which has been manufactured, and I use that word advisedly, by professional $1 million union-busting organizations.

Although, I should point out that recently in the Wall Street Journal it is reported that:

> Most major business organizations have not joined the effort to boost this bill. An official at one large business group conceded privately that picket line violence is not a high priority item or major problem for many companies.

As noted by Chairman Mathias at the previous hearing, the committee is really interested in whether or not the supporters of the bill have been able to establish that violence is pervasive, that State and local law enforcement agencies have not been able to control alleged violence, that existing Federal laws are inadequate, and that the Federal Government is better able to deal with violent acts occurring at the local level, than are the many local law enforcement agencies, without adversely affecting the ability of the Federal Government to pursue other high priority responsibilities.

My reading of the testimony already presented makes it clear to me that these burdens have not been met. It has also occurred to me because these burdens have not been met, the attempt is made here to regale this committee with a parade of horribles, to persuade the committee that there is some great crisis abroad in the land which needs immediate attention by this august body.

It is just not so.

S. 613 TO RETURN LABOR POLICY OF UNITED STATES TO PRE-WAGNER ACT DAYS

Congress recognized almost 50 years ago that institutionalizing industrial conflict and defusing it through mandatory collective bargaining between employer and worker representatives was the best way to reduce industrial strife and the consequent violence that occurred, and I cite this because the experts in the field, including the academicians, have stated that the most important single cause of violence in labor disputes had been controversy over union recognition, and that the sharp decline in violence, and there has been, is attributed particularly to the Wagner Act and to procedures for representation elections.

There is no statistical evidence to prove the contrary.

I should say to our friends who represent the public sector, that if they on a State and local level, had in good faith and good will adopted little Wagner Acts in their own State to permit public employees the right to join together and engage in concerted activities, they would not be having the problems which the private sector had before the Wagner Act was passed.

Senator MATHIAS. Now you are getting close to an invitation to go down to the third floor, too, right down to room 3302, on New Federalism. You've got something to say to them.

Mr. PREVIANT. If my friend, Bob Thompson, is there, I would be glad to join them.

Senator MATHIAS. I don't believe any of you are going to go. I think you are going to take the elevator to the street. I think that tells us something about New Federalism.

Mr. PREVIANT. I think we ought to pass on that one.

On the first point whether labor violence is pervasive, we respectfully suggest there is no evidence to support the expansion of the Federal extortion law for that reason.

THERE IS NO EVIDENCE TO SUPPORT EXPANSION OF FEDERAL EXTORTION LAW

In order to gain a realistic perspective as to the severity of the alleged problem of labor violence in the context of legitimate collective bargaining, we asked our research department to conduct a search for all relevant statistics compiled by the various agencies of the Federal Government.

We found that the statistics maintained on labor-related violence were notable only by their absence.

In addition, we discussed the question of labor violence and its alleged pervasiveness with representatives of major criminal law enforcement agencies.

Similarly, we found no support for Federal intervention in labor disputes based on the professional experience of these organizations.

We looked at the "Source Book on Criminal Justice Statistics" issued by the Department of Justice. There are no statistics maintained on labor-related violence in any form. The Federal Bureau of Investigation in its annual uniform crime report does not mention labor-related violence. The only Federal Government statistic that we could find is the one that has been discussed here today, the Bureau of Alcohol, Tobacco and Firearms, and was discussed, as I recall, before this committee in December, so I don't believe I should take your time with it.

There has been discussion as to the significance of the figures, but as the chairman pointed out, the category of "labor related" is not assigned to either union or management, or to perhaps some third party stranger in the labor dispute.

I think that there is also more to be said than just that. The use of the expression "labor related" is usually only a conclusion of the Bureau, based on facts that may be only coincidental in that the act of violence may have occurred at a time and place where a labor dispute was in progress or suspected. But the event could have been totally unrelated to the dispute.

I am reminded of an incident early in my career when an attempt was made to organize a shop in the city of Detroit and the night after the organizer had called on the shop, the windows of that shop were blown in. The headlines the next day, in the paper was "Teamster goons strike again."

Two days later, the policemen came up with a disgruntled former employee of the shop who admitted he had been fired or discharged, and left under some kind of onus, and that it was he who had, in a pique of personal animosity, thrown the bricks through the window.

So what is labor related, unless it is specified, cannot be said to be actually caused by either the employer or the union in that particular dispute.

I think that the figures which are submitted are miniscule compared to all acts of violence, to all disputes that occur in this country. But they do show a minimal amount.

I think in this regard, the statement made by Assistant Attorney General Rose with respect to the same charge, after taking issue with the characterization of the chart showing labor-related bombing as No 1, said that in any event that does not lead to the conclusion that State and local law enforcement agencies are not dealing with these bombing episodes.

I think that is very significant.

The statement presented by Mr. Thompson for the chamber of commerce this morning argued that there is no case for making the law symmetrical. I don't personally believe symmetry will save the law. His point that there is no case for making the law symmetrical, I think, is answered by a very recent event which we have attached to our statement, the decision of the Federal judge in Virginia in the *Great Coastal Express* case, a case that arose out of a legitimate labor dispute with a union that had a contract with an employer and was renegotiating a new contract. The dispute was marked by instances of alleged violence and incidents of alleged secondary boycott. The damage action was started against the international union.

The jury originally returned a verdict of $1,300,000. That verdict, on retrial, was cut $800,000, affirmed on appeal, and the union paid.

After that, some employees at Great Coastal approached representatives of the union and acknowledged to them that they had perjured themselves, and now they were angry because they didn't get their silver coins for that perjury.

And they, therefore, gave affidavits to the union and live testimony in court which the court accepted as clear proof that these employees who were not striking, were offered rewards and bonuses if they, themselves, would inflict damage on their own equipment, which they did.

This was found to be a fact by the judge. The employers never took the stand, perhaps for fear they might incriminate themselves as a part of a perjury conspiracy.

Now, that matter is still on appeal because the significance of the perjury under the laws with respect to whether or not that judgment can be reopened and set aside is a question of law which is now being considered in the fourth circuit.

But this, I am sure, is not the only case of its kind where employers have sought to sway public opinion, have sought to put a union in the light where it could not succeed in a particular dispute, by either themselves damaging their own equipment or by hiring goons to do so.

I think the books on labor history are replete with those kind of instances such as bringing in strikebreakers for the purpose of deliberately provoking incidents or for deliberately creating the act of violence itself.

The book "Violence in America" which we quote in one part of our statement has a number of articles which deal with these problems.

Getting back to our principal point, in view of the apparent lack of statistical verification for any significant problem of acts of violence occurring during legitimate collective bargaining, we find ourselves in the position of having to respond to the few incidents alleged by the supporters of legislation to amend the Hobbs Act as being of crisis proportions, requiring the attention of the Congress of the United States.

Although we lack the capacity to investigate the facts of each incident, we would be happy to assist the subcommittee staff in any way to respond to these allegations.

There is no doubt that instances of violence which may be associated with labor disputes get front page coverage. As has been repeated often enough, it may seem like an awful lot. If you consider the figures that were initially submitted to you by the AFL-CIO and the figures we submit today, and the number of collective-bargaining agreements that mature and are renegotiated in this country, the number of organizing drives that take place in this country, the number of strikes that take place in this country, we again are certainly talking about what is absolutely miniscule. No matter how many times repeated, it doesn't make it any larger or any greater.

LACK OF FEDERAL INTERVENTION

Now, with respect to the criminal law enforcement organizations, who are enforcing State law, our research concerning the position of key law enforcement agencies on the need for Federal intervention in the labor violence area reflects the following:

The National Association of Attorneys General, in their resolutions on criminal code reform adopted in 1979, not only made no mention of a problem of labor-related violence in legitimate collective bargaining situations, but adopted a resolution in opposition to the expansion of Federal criminal jurisdiction for statutes such as the Hobbs Act. This opposition was reaffirmed by the association in recent testimony before the Senate Judiciary Committee.

Spokesmen for the National District Attorneys Association, the International Association of Chiefs of Police, and the National Sheriffs' Association have represented to us that none of their organizations have adopted any statement describing labor-related violence in legitimate collective bargaining as a problem.

The final report of the Attorney General's task force on violent crime issued on August 17, 1981, did not mention labor-related violence or expansion of the Hobbs Act to legitimate collective bargaining situations in its final recommendations on what ways the Federal Government can improve the efforts to combat violent crime without limiting its efforts against organized and white-collar crime.

During testimony on December 14, 1981, before the House Subcommittee on Criminal Justice concerning revision of the Federal Criminal Code, Chairman Conyers asked a spokesman for the Federal Public Community Defenders whether there was a disinclination by local law enforcement officials to get involved in labor dispute violence.

The spokesman responded that to the contrary, such cases are vigorously prosecuted.

You will recall that Assistant Attorney General Rose, when he testified before the subcommittee last December, said that the Department of Justice of the United States has not found a reluctance on the part of State and local officials to prosecute violence in labor disputes. He did not see it as a significant problem. He did not view it as urgent.

In response to the last witness who complained that the State laws stop at the boundary of the State, again I draw upon my own knowledge. There was a very bitter strike at the Kohler Plumbing Co. in my State of Wisconsin many years ago. One of the nonstrikers was severely beaten in a tavern during a quarrel. The assailant was a union representative and a resident of Michigan, and he immediately departed Wisconsin for Michigan. It took some time, but that man, who had been identified, was extradited as a result of an agreement between the Governor of the State of Wisconsin and the Governor of the State of Michigan. He was returned to Wisconsin. He was prosecuted for violent assault and endangering life and served considerable amount of time in prison.

Senator **Specter**. On the contention that Federal legislation may be necessary because State boundaries end and others begin, was there any specification as to some case which had not been prosecuted as a result of that factor?

Mr. **Previant**. Well, I think the statement was made in the context of violence which in my opinion would be covered by other Federal laws such as the Travel Act, the Explosives Act, RICO and others. That is another point, Senator, which we do intend to make.

Senator **Specter**. RICO covers violence, assault, and battery cases?

Mr. **Previant**. If it is a simple assault and battery, no. But a scheme to commit violence in interstate commerce, may be part of a pattern of other criminal violations such as extortion which I believe would bring into play RICO.

We have a very sad experience with that right now. The Senator has read the paper that in the last few days it's been applied to a labor union in New Jersey because of allegations of violence.

Senator SPECTER. Wasn't there substantially more involved than the violence to bring RICO into play?

Mr. PREVIANT. This was a RICO conviction, there was an extortion involved. There was a conviction of extortion, that is true. Section 302.

I think that really when this argument is made, one who operates on a State level for many years has to resent the suggestion that State enforcement officials are either lazy or incompetent.

Senator SPECTER. How about overworked?

Mr. PREVIANT. Or corrupt. I am sure they may be overworked.

Senator SPECTER. Would that be grounds?

Mr. PREVIANT. No; I don't think that would be grounds. I think they normally get enough funds and help to do that. And I think that they are entitled, if the Senator please, to a presumption that they comply with their oaths of office, and that they do not make their——

Senator SPECTER. Has anybody brought to your attention any specific case which has not been prosecuted on the local level where prosecution was warranted for assault and battery, or aggravated assault and battery?

Mr. PREVIANT. There has been some testimony here that there were none such prosecutions. I would impair my credibility if I said it never did happen. I am sure it does happen in the Federal sphere as well.

Senator SPECTER. Do you know of any cases where it has happened?

Mr. PREVIANT. I know of no cases involving a major crime where it has happened, no.

Senator SPECTER. Well, there are ways that private complainants can compel a district attorney to act, petition the court for the appointment of an assistant prosecutor. You cannot mandamus a prosecuting attorney, but there are statutes in many jurisdictions for appointment of substitute prosecutors.

Mr. PREVIANT. And State attorney generals I also believe have supervising authority in many States to replace district attorneys if some are unwilling to do the job. All of those things can be handled, have been handled. I think it is rather a gratuitous insult to all these people to say that they are not just able to, or willing to, or so afraid what will happen at the next election, they just don't want to do their job.

Senator SPECTER. How does the New Federalism bear on this issue in your judgment?

Mr. PREVIANT. The issue——

Senator SPECTER. More important, to central government?

Mr. PREVIANT. Well, there certainly would be the creation of a national police force, it seems to me, if this goes through, particularly that part of the statute to which we have not addressed ourselves. That is the general criminalization of all laws. We are addressing ourselves only to the question of the——

Senator **Specter**. We apologize to you for changing the quarterbacks in the middle of our play, but Senator Mathias had other commitments. It is a tough day, because of the Williams matter, and we have limitations as to time.

We have your full statement for the record, so, unless you have something else you specifically want to bring to our attention, we would like to move along. We may have to interrupt here soon.

Mr. **Previant**. If the Senator would indulge me for perhaps no more than 2 minutes, I have a statement which does not appear in my prepared statement, that I would like to put into the record at this time.

Senator **Specter**. Yes.

Mr. **Previant**. References have been made in this record to charges by some of the proponents of the bill that *Enmons* created either a loophole or an unjustifiable exemption for labor unions to commit extortion or created an anomaly which though not significant, should not be permitted to continue, or as Mr. Thompson said this morning, judicially created immunity.

The fact is that for over a century in this country neither the common law nor Federal statute defined extortion as including violence or threats of violence to achieve better wages, hours, or working conditions, during the course of lawful labor disputes. I would go so far as to say collective bargaining to exchange one's labor for a share of the wealth it produces when combined with the employer's capital, is not a taking of the property of the employer, as such term is used in extortion statutes.

I use this only as an illustration of why extortion laws have not and should not be applied to lawful collective bargaining for an improved working conditions, even if marked by isolated acts of violence.

The Hobbs Act did not change that law. It recognized that violence to obtain property for personal payoff or for wage payments in return for unwanted, superfluous, or fictitious service was extortionate. But an ambitious assistant Attorney General tried to distort the law to include activities which the Congress never intended to make unlawful. The Supreme Court rejected this attempt, finding that Congress had not intended to change the established law which did not classify as extortion, a strike for legitimate goals, even if accompanied by violence.

The refusal of the U.S. Supreme Court to create a crime which Congress did not declare a crime cannot be declared a "judicial anomaly," or a "loophole," or an "exception."

Instead, the proponents of S. 613 are proposing to change the course of labor history and to create a new crime out of legitimate union activities which may be accompanied by violence. They are not campaigning against extortion, they are campaigning against lawful trade union objectives and the point of this is, confirmed by the testimony that was offered here by Mr. Larson on December 11, and I will quote, he said that, the bill is needed to "close loopholes" in the Hobbs Act and to subject union officials, and this is a direct quote, "to prosecution for violence perpetrated in pursuit of extortionate objectives."

Enmons extortionate objectives are already embraced within the definition of extortion.

We respectfully submit that by emphasizing extortion objectives in a context of S. 613, the National Right to Work Committee reveals its true aim.

It is a thinly veiled attempt to outlaw eventually any activity in furtherance of legitimate ends of collective bargaining.

Senator SPECTER. Do you think there is some line of violence which may generally be extortionate, which would be covered under the Hobbs Act?

Mr. PREVIANT. Not in the course of a legitimate labor dispute for legitimate objectives.

There are and have been prosecutions, if it is a "shakedown"——

Senator SPECTER. So that you think that if there is violence used as a part of extortion it may be a violation. But by that definition wouldn't the amendment be pretty much meaningless?

Mr. PREVIANT. What I think the man is saying is that we recognize that it includes an extortionate objective like a shakedown or an unwanted job, but we want to close the loophole to make all extortionate objectives illegal, and he says violence during the course of lawful labor dispute will ipso facto, by the mere act of its occurrence, make that objective of that labor dispute an extortionate objective.

Senator SPECTER. So is the critical point, as you see it that there has to be some demand for money? Suppose somebody says to another, "Unless you comply with my request to extend this hearing, I am going to beat you up."

Now, there is no money involved there, but there is a demand for something, something of value and the demand then is for that item, and there is going to be violence. Would that be extortion?

Mr. PREVIANT. I think that would be, yes. I think that is what is covered by the law now, threat to personal property.

Senator SPECTER. It seems to me a great deal of time we deal with symbolism. There is a real issue as to your point and it now comes to the fact that we really may be able to cover extortion now, violence connected with genuine extortion, even if money is not demanded.

What you are seeking to avoid is attaching Federal jurisdiction to a simple assault and battery case that just may happen to be incidental to a genuine labor dispute, or somebody may lose his temper and there may be a fistfight and that fistfight may not even be incidental to some demand on the labor dispute.

Would you think the defendant would prefer to be prosecuted by the State DA or the State attorney general, as opposed to a U.S. Attorney?

Mr. PREVIANT. Well——

Senator SPECTER. If we are just talking about assault and battery?

Mr. PREVIANT. I was going to say that it should be made clear that we do not distinguish between the degree of violence as to whether or not it should be extortion.

We distinguish between whether or not this is a legitimate labor dispute for a legitimate labor objective.

Senator SPECTER. The distinction is its purpose?

Mr. PREVIANT. Exactly. Exactly.

Senator SPECTER. All right.

Suppose you have an assault and battery, or an aggravated assault and battery and it is incidental to a legitimate labor dispute, you can still have a criminal prosecution for assault and battery?

Mr. **Previant**. Yes.

Senator **Specter**. Under State law today?

Mr. **Previant**. Of course.

Senator **Specter**. Suppose the Federal courts have concurrent jurisdiction on assault and battery cases, would there be a preference not to be prosecuted in a Federal court as opposed to a State court?

Mr. **Previant**. It might just be the difference of $5 in cost or $10,000 in fine, because under the way this law is worded, there is no simple remedy for simple assault.

Senator **Specter**. So you're concerned about the penalty provisions?

Mr. **Previant**. I think the penalty definitely has a chilling effect in that it is unfair that just because that assault happened on the picket line rather than in a saloon debating the merits of two football teams, they should be subjected to these higher penalties.

Senator **Specter**. Well, these penalty provisions in criminal statutes are uniformly disregarded. That is not to say that they ought to be enacted, but they are uniformly disregarded.

Mr. **Previant**. As long as they are there, they are a threat. It depends upon who is going to be enforcing the law.

Senator **Specter**. I can't disagree with that.

Well, thank you very much.

Again, we apologize for the shift in teams here.

[Prepared statement and a memorandum submitted by Mr. Previant follow:]

PREPARED STATEMENT OF DAVID PREVIANT

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is David Previant and I am Chief Labor Counsel of the International Brotherhood of Teamsters. I am joined by Robert M. Baptiste, Labor Counsel for the International. We appear today on behalf of General President Roy L. Williams, who is unable to be with us.

We are pleased to have this opportunity to offer the comments of the International Brotherhood of Teamsters on S.613, a bill to amend the federal extortion statute, commonly referred to as the Hobbs Act. The International Brotherhood of Teamsters is a labor organization representing approximately two million working men and women and is deeply concerned with legislation that has an impact on the right to engage in collective bargaining and concerted activities in support of that right.

I have been professionally associated with the trade union movement since 1935, and I am not unfamiliar with legislative proposals that purport to cure evils associated with the collective bargaining relationship but which are really aimed at destroying or weakening the effectiveness of the trade union movement. In one fell swoop, S.613 turns the clock back to the pre-Wagner Act days of trial by combat. Surely, workers will be extremely hesitant to join a picket line knowing that any remark they or others make or act they commit, however provoked or thoughtless, could subject them to the severe penalties of the federal extortion law. Moreover, S.613 is an unsubstantiated insult to the working men and women of this country who honor and obey the laws of this land. Having worked on behalf of working men and women for some forty-seven years, it is extremely painful for me to watch this legislation drift through this Congress on a tide of anti-union propaganda that has been manufactured by professional million dollar union-busting organizations. It must be pointed out that "most major business organizations have not joined the effort to boost the bill. An official at one large business group conceded privately that picket-line violence is not a high-priority item or major problem for many companies."[1]

At the outset, though, it should not be necessary for us to repeat that neither this Union, its officers, nor the members, by opposing this legislation, seek to condone, justify, or endorse the use of violence by any party to a labor dispute. Our opposition to unnecessary federal encroachment in this field should not be so interpreted. We hope it will not.

As noted by Chairman Mathias at the December 10, 1981 hearings on S.613, "the central question presented by this legislation and before the Subcommittee today is whether or not the expansion of federal jurisdiction that is envisioned by S. 613 is justified by a sufficiently compelling federal interest." As I understand the Chairman, then, the questions really are whether the supporters of the bill established that:

1. labor violence is pervasive,
2. state and local law enforcement agencies have not been able to control this alleged violence,
3. existing federal laws are inadequate, and
4. the federal government is better able to deal with violent acts occurring at the local level than are the many local law enforcement agencies, without adversely affecting the ability of the federal government to pursue other high priority responsibilities.

As I understand the testimony already presented, it is clear that the union-busting supporters of this bill can not meet any of these criteria. Recognizing this difficulty, they have directed their efforts and ample financial resources to clouding the issues through the use of a publicity campaign that is best characterized by its absence of factual support.

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[1] Wall Street Journal, December 11, 1981, p.12.

Even if one ignores this obvious failure to provide any support for federal intervention in an area of police power that has traditionally been reserved for the states, the impact of the passage of S.613 on the successful collective bargaining system adopted in this country would be devastating.

S.613 Will Return The Labor Policy Of The United States To The Pre-Wagner Act Days

Congress recognized almost fifty years ago that institutionalizing industrial conflict and defusing it through mandatory collective bargaining between employer and worker representatives was the best way to reduce industrial strife and the consequent violence that occurred. As two outstanding experts in the field of labor relations have noted:

> The most important single cause of violence in labor disputes has been controversy over union recognition. The sharp decline in violence is attributed particularly to the Wagner Act (1935) and to procedures for representation elections. 2/

As I will detail below, there is no statistical evidence to prove the contrary, because the Wagner Act and the model it set in place in the United States has worked effectively and continues to work with a minimum of violence.

S.613 seeks to once again revive the early 1800's conspiratorial view of combinations of workers engaged in collective actions against employers. 3/ Worker participation in strikes under S.613 would become the subject of review by federal criminal enforcement agents. As in the early labor cases in this country:

2/ Bok and Dunlop, Labor and the American Community, 229 (1970); Cohen, Labor in the United States, 365 (1979).

3/ Commonwealth v. Pullis, Mayors Court of Philadelphia (1806)(Philadelphia Cordwainers' Case).

> The stress of the prosecution [will be] upon the coercion incident to the activities and objects of the association . . . without distinction between whether they were effected by acts then recognized as unlawful (beating of strike-breakers) or by acts which were not (refusal of association). 4/

In other words, the acts and statements of workers, whether or not they are related to violent activities, become evidence in criminal investigations. Moreover, under the S.613 scheme, workers will be subjected to dual prosecution for the same act - once at the state level and then again at the federal level. All of this and more is the result of what can only be termed as a perverse view of the generally accepted concept of extortion. Defying belief, union busters have classified worker efforts to gain improved wages and benefits from employers as attempts to obtain the property of another by extortion if accompanied by any type of isolated nonrepetitive violence. As this Subcommittee previously noted in its Report On The Criminal Justice Reform Act of 1975, "since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property . . . such isolated acts of violence do not partake of the nature of extortion." (Report at 624) S.613's rewrite of the law of extortion inevitably invites a return to the days when combinations of workers to raise wages were viewed as an unlawful conspiracy. Thus, the passage of S.613 will cause labor relations in this country to return to a pre-Wagner Act atmosphere, similar to that presently occurring in Poland.

There Is No Evidence To Support Expansion Of Federal Extortion Law

In order to gain a realistic perspective as to the severity of the alleged problem of labor violence in the

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4/ Nelles, The First American Labor Case, 41 Yale L.J. 165 (1931) (emphasis added).

context of legitimate collective bargaining, we asked our Research Department to conduct a search for all relevant statistics compiled by the various agencies of the federal government. We found that the statistics maintained on labor-related violence were notable only by their absence. In addition, we discussed the question of labor violence and its alleged pervasiveness with representatives of major criminal law enforcement agencies. Similarly, we found no support for federal intervention in labor disputes based on the professional experience of these organizations.

There Is No Statistical Evidence To Support S.613

The Department of Justice, through its Bureau of Justice Statistics, compiles the Source Book on Criminal Justice Statistics. In the most recent edition, for the year 1980, there are no statistics maintained on labor-related violence in any form. Similarly, the Federal Bureau of Investigation, in its annual uniform crime reports, Crime in the United States 1980, does not mention labor-related violence in any of its statistics on crime. Furthermore, sources at the Labor Department Bureau of Labor Statistics and the Division of Information of the National Labor Relations Board indicate that no statistics are maintained on incidents involving labor violence.

In point of fact, the only federal government statistics that we could find with respect to labor-related violence in any form come from the annual report of the Bureau of Alcohol, Tobacco and Firearms in the publication Explosives Incidents 1980. In that publication, "labor related" is the described motive in 28 bombing and incendiary bombing incidents (Tables 9 and 10), and 24 arson incidents (Table 27) in 1980, a total of only 52 incidents in the country in one year. These include all acts committed outside as well as within the context of a labor dispute for legitimate collective bargaining objectives, and the use of the expression "labor related" is usually only a conclusion of the Bureau based on facts that may be only coincidental in that the act of violence may have occurred at a time and place where a labor dispute was in progress or suspected. But the event could have been totally unrelated to the dispute.

It is important to keep in mind when considering these statistics that the term "labor related" includes the acts of both employers and employees. Lest anyone be led to believe that employers do not engage in threats and acts of violence to discourage union organizing efforts or for their own personal gain, we refer you to the recent findings of fact by a United States District Court in the case of Great Coastal Express v. International Brotherhood of Teamsters, 108 L.R.R.M. 2155 (E.D. Va. 1981) (memorandum of findings of fact dated August 27, 1981 attached). In this case in 1972, Great Coastal Express was awarded a sum of $1,300,000.00 for damages during a labor dispute which had been marked by acts of violence allegedly committed by the members of the International Brotherhood of Teamsters during a labor dispute for legitimate collective bargaining objectives. On a motion to reopen the judgment based upon newly discovered evidence, the District Court found that not only had the employees of Great Coastal Express given false statements to authorities and committed perjury under oath at trial, but that they, under the direction of the management of Great Coastal Express, had actually committed the acts of violence and property destruction that were some of the bases of the suit.

In this regard, it should be noted that the efforts to amend the Hobbs Act to put workers in federal prisons for long jail terms for acts that occur during a legitimate labor dispute do not extend this liability to management and their agents who commit similar acts.

Getting back to our principal point, in view of the apparent lack of statistical verification for any significant problem of acts of violence occurring during legitimate collective bargaining, we find ourselves in a position of having to respond to the few incidents alleged by the supporters of legislation to amend the Hobbs Act as being of crisis proportions, requiring the attention of the Congress of the United States. Although we lack the capacity to investigate the facts of each incident, we would be happy to assist the Subcommittee staff in any way to respond to these allegations. Even without specific responses at this time, we would submit that a substantial number of the incidents alleged at these hearings were or will be dealt with at the state or local level with appropriate severity. In this regard, the excellent submission by Laurence Gold, Special Counsel for the AFL-CIO, analyzing the alleged incidents of violence, is very revealing. We further submit that though threats or acts of violence committed by workers are the convenient source of headlines, cases such as the Great Coastal Express decision rarely are.

Although the lack of statistics on labor-related violence should provide some insight to the reality of the alleged problem, various law enforcement and prosecutorial authorities are another source of evidence as to the exaggerated claims made by advocates of Hobbs Act amendments.

Criminal Law Enforcement Organizations Do Not Support Federal Intervention

Our research concerning the position of key law enforcement agencies on the need for federal intervention in the labor violence area reflects the following:

1. The National Association of Attorneys General, in their resolutions on criminal code reform adopted in 1979, not only made no mention of a problem of labor-related violence in legitimate collective bargaining situations, but adopted a resolution in opposition to the expansion of federal criminal jurisdiction for statutes such as the Hobbs

Act. This opposition was reaffirmed by the Association in recent testimony before the Senate Judiciary Committee.

2. Spokesmen for the National District Attorneys Association, the International Association of Chiefs of Police, and the National Sheriff's Association have represented to us that none of their organizations have adopted any statement describing labor-related violence in legitimate collective bargaining as a problem.

3. The Final Report of the Attorney General's Task Force on Violent Crime, issued August 17, 1981, did not mention labor-related violence or expansion of the Hobbs Act to legitimate collective bargaining situations in its "final recommendations on ways in which the federal government can improve its efforts to combat violent crime without limiting its efforts against organized and white collar crime".5/

4. During testimony on December 14, 1981 before the House Subcommittee on Criminal Justice concerning revision of the federal criminal code, Chairman Conyers asked a spokesman for the Federal Public and Community Defenders whether there was a disinclination by local law enforcement officials to get involved in labor dispute violence. The spokesman responded that to the contrary, such cases are "vigorously prosecuted."

In conclusion on this point, we maintain that the statements made by advocates of expansion of the Hobbs Act are exaggerations and gross misrepresentations of the truth. There were 3,885 work stoppages in 1980 and 2,577 work stoppages in 1981,6/ and 8,198 NLRB certification elections in 1980 7/ in the United States. Added to the approximately 1900 major collective bargaining agreements (agreements

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5/ Letter of transmittal from the Attorney General's Task Force on Violent Crime to the Attorney General, Final Report August 17, 1981 of the Attorney General's Task Force on Violent Crime, page iii.

6/ "Analysis of Work Stoppages", 1980 and 1981, to be published later this year, Bureau of Labor Statistics.

7/ Division of Information, National Labor Relations Board. Statistics for 1981 not available.

involving more than 1000 employees) that the Bureau of Labor Statistics has on file that are renegotiated over a three year period[8/] (and a great many more agreements involving fewer workers), the country is always confronted with a substantial number of potential and actual labor disputes for legitimate collective bargaining objectives. To cite a small number of well-publicized incidents of threats or acts of violence in these situations as indicative of a nation-wide campaign of violence or terrorism is a disservice to the working people of this country and the truth.

Existing Federal And State Laws Provide Adequate Remedies For Misconduct During Labor Disputes

One of the basic principles of justice is that duplicate enforcement of federal and state laws dealing with the same subject should be avoided.[9/] In light of that sound goal, it should be noted that strike-related violence by employees or unions is now subject to punishment by state and local authorities. Indeed, every single wrong that would be made a federal crime by S.613 is already a crime under state or local laws today. Thus, expanding the Hobbs Act will not close any enforcement gaps left open by either state or local laws.

S.613 would confer federal jurisdiction over every case of aggravated assault or property destruction which is associated in any way, shape or form with otherwise protected strike activity. That result would be accomplished by expanding the Hobbs Act to cover wrongs "in any way or degree" affecting commerce. This phrase has been interpreted to manifest "a purpose to use all the constitutional power Congress has" to reach the conduct in question.[10/]

[8/] Bureau of Labor Statistics.

[9/] Petite v. United States, 361 U.S. 529 (1960)

[10/] Stirone v. United States, 361 U.S. 212, 215 (1960).

In this regard, it has also been held that "[o]nly a de minimis effect [on interstate commerce] is necessary . . . and the effect need be only probable or potential, not actual."[11] It is difficult to conceive of any incident involving aggravated assault or property damage at any workplace or involving any person at work that would not be within the federal jurisdiction under this proposal.

Yet there already exists a substantial body of federal law to deal with labor violence. First, it must be pointed out that Enmons does not foreclose prosecution of all extortionate acts simply because they occur in the labor dispute context. Truly extortionate conduct in the form of threatened force or violence against an employer in order to obtain personal payoffs or to exact "wage" payments in return for unwanted, superfluous, or fictitious services are well within the ambit of the current Hobbs Act.[12] The issue before this Subcommittee is whether federal extortion law, in addition to existing state criminal statutes proscribing the specific acts involved, should be expanded to apply to conduct during a labor dispute for legitimate collective bargaining objectives.

Adequate federal remedies already exist for misconduct during a legitimate labor dispute. Congress has already legislated that misconduct can be the subject of unfair labor practices under the Labor Management Relations Act. If a union or its agents engage in strike-related misconduct, the NLRB will institute proceedings against the individuals and organizations involved.[13] Any finding of such violations is enforceable in the Courts of Appeals. Repeated violations can result in the NLRB seeking civil and criminal contempt sanctions against the offenders. If the misconduct is serious enough, the NLRB will even deny bargaining rights to the union involved.[14/] The remedies already provided by federal law are, we submit, sufficient. Any intrusion of federal criminal law into legitimate strike situations will severely disrupt the balance already achieved by Congress in the labor-management relations area.

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[11] United States v. Phillips, 577 F.2d 495, 501 (9th Cir.), cert. denied, 439 U.S. 831 (1978).

[12] United States v. Green, 350 U.S. 415 (1955).

[13] The NLRB has long recognized that strike-related misconduct by agents of a union has a coercive effect on employees and violates Section 8(b)(1)(A) of the Labor Management Relations Act, 29 U.S.C. § 158(b)(1)(A). Rockville Nursing Center, 193 N.L.R.B. 959 (1971); Steelworkers Local 586 (Inspiration

(Continued)

A recent decision of the U.S. Court of Appeals in San Francisco graphically demonstrates the availability of other federal criminal provisions to deal with violence. In U.S. v. Thordarson, 646 F.2d 1323 (1981), cert. denied, ____ U.S. ____, 70 L. Ed. 2d 591 (November 16, 1981), the court reinstated a federal indictment under the Explosives Act, 18 U.S.C. § 844, and the Travel Act, 18 U.S. § 1952, involving the use of explosives to damage vehicles used in interstate commerce. Furthermore, the RICO statute, 18 U.S.C. § 1962, is also available where extortion is used to illegally acquire or maintain any interest or control in any enterprise through illegal means.[15/]

(Continued)
Consol. Copper Co.), 174 N.L.R.B. 189 (1969); Vera Ladies Belt & Novelty Corp., 156 N.L.R.B. 291 (1965). Section 8(b)(1)(A) makes it an unfair labor practice "to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title . . . ." The acts of violence or threats thereof may be against an employee Union Nacional de Trabajadores (Catalytic Indus. Maintenance Co., Inc.), 219 N.L.R.B. 414 (1975), enf'd, 540 F.2d 1 (1st Cir. 1976); Steelworkers, Local 586, supra, 174 N.L.R.B. at 189, or an employer Laura Modes Co., 144 N.L.R.B. 1592 (1963). The NLRB has the authority to issue a cease and desist order which is enforceable in the U.S. Courts of Appeals.

[14/] Even though the Union has won an NLRB-conducted election to represent the employer's employees, the NLRB will revoke the certification if the union engages in serious acts of misconduct. Union Nacional de Trabajadores (Carborundum Co.), 219 N.L.R.B. 862 (1975), enf'd sub nom, NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (1st Cir. 1976). In a less drastic case, the NLRB ordered a new election. Laura Modes Co., supra, 144 N.L.R.B. at 1596.

[15/] Blakey and Goldstock, On The Waterfront: RICO And Labor Racketeering, 17 Am. Crim. L. Rev. 341, 358 (Winter 1980).

Similarly, there is an extensive body of state criminal and civil laws dealing with extortion, assault, battery, destruction of property and arson. The states are not preempted by the labor laws when the matter involves the traditional power of the state to preserve the peace. State courts may enjoin violence and threatening activity, as well as award compensatory and punitive damages for the consequences of such actions.[16]

Given this ample body of state law and the present budgetary crisis faced by federal agencies, who are already at "wits end" trying to meet existing responsibilities,[17] the proper role for the federal government in criminal law enforcement should be a limited one. As Senator Biden inquired during the December 10, 1981 hearing, since the Administration plans to "drastically cut the enforcement capability of the law enforcement agencies of this country . . . who in the heck is going to investigate these cases." Similarly, as the Attorney General's Task Force on Violent Crime noted:

> We do not believe that the federal government should direct or subsidize the ongoing operations of state and local criminal justice systems or should supercede those systems with a national police or court or correctional system. But we do believe that by providing useful services, national perspectives, and financial assistance for specific important purposes, the federal government can do much to improve the coordinated federal-state-local fight against serious crime. [p. 60]

Such an approach clearly falls within the Administration's new federalism doctrine. A spokesman for the Administration noted:

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[16] United Automobile Workers v. Anderson, 351 U.S. 959 (1956); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942); United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954).

[17] Senator Biden recently observed that the 94 U.S. attorneys' offices are already so overburdened that in 1979, nearly 60 percent of the cases filed were dropped because the prosecutors "just don't have the time." Washington Post, October 24, 1981, p.A-5.

> "*** [W]e would hope to clearly define the role of the federal government, a role which has been somewhat diffused over the past ten years, as to its responsibility for the crime problem. The federal government to be sure has a role, but that role is a limited one and it should be recognized as a limited one. The principal responsibility for the control of crime, particularly the kind of crime that affects most citizens - the robberies, the burglaries, the murders - are the responsibility of state and local governments."[18]

A Summary of Our Objections To S.613

Without engaging in a detailed legal analysis at this time, I would like to summarize our substantive objections to S.613.

1. S. 613 infringes upon and discourages the exercise of the right to strike. Since few workers will be willing to join a picket line knowing that the acts of others or incidental comments they make will subject them to federal extortion prosecution, the right to picket and strike will be effectively weakened.

2. Union members are punished more severely than strikebreakers. Union members are subject to a maximum fine of $250,000 or imprisonment for life or both; while strikebreakers cannot be fined more than $5,000 and imprisoned for more than two years, or both. 18 U.S.C. § 1231.

3. S. 613 aligns the government with management in a labor dispute. This is best illustrated by the fact that union, but not employer, violence is punishable under S.613. Since legitimate economic strikes by their nature are not extortionate, a perversion of the traditional extortion concept is required to make it applicable. S.613

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[18] Edwin Meese, Counselor to President Reagan, Remarks Before American Bar Association, New Orleans, Louisiana, August 11, 1981.

achieves such a perversion by defining worker attempts lawfully to increase their wages as attempts to take the property of the employer. However, since there is no "property" of the workers at stake, there can be no federal extortion prosecution for threats or acts of management in its attempts to break a strike or discourage union organizing. In such circumstances, management employees will be subject only to state criminal penalties while workers could be prosecuted under state law and at the same time be subject to the much greater penalties under federal extortion law.

4. S.613 will result in penalties vastly disproportionate to the nature of the act committed. A simple assault will be converted into a federal felony because it happened in the context of a legitimate labor-management dispute. Consider this example:

> A fistfight breaks out on a picket line between management employees and striking workers and both parties receive minor physical injuries. Under S.1630, the Senate Criminal Code Reform bill sponsored by Senator Thurmond, if federal jurisdiction were established, both participants would be criminally liable for a battery, a class C misdemeanor punishable by imprisonment for not more than thirty days. Under S.613, however, because the battery occurs during a legitimate labor dispute and involved bodily injury, the striking worker could be sentenced to twenty years in federal prison, just five years less for a fistfight than he would receive for armed insurrection against the government of the United States under S.1630.

5. Even though workers would be subjected to federal extortion prosecution, they could still be charged and prosecuted under the applicable state criminal statute for the specific act committed without violating the double jeopardy provision of the Constitution.[19] Thus, the advocates of this legislation are creating a distinction that would result in a gross injustice to American workers, subjecting

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[19] U.S. v. Wheeler, 435 U.S. 313 (1978).

them to disproportionate federal penalties and state penalties for the same acts, merely because those acts occur during a legitimate labor dispute.

Justice Black, writing in the dissent in Bartkus v. Illinois, 359 U.S. 121, 151-156(1959), argued:

> Fear and abhorrence of governmental power to try people twice for the same conduct is one of the oldest ideas found in western civilization . . . . Few principles have been more deeply — 'rooted in the traditions and conscience of our people.' The Court apparently takes the position that a second trial for the same act is somehow less offensive if one of the trials is conducted by the Federal Government and the other by a state . . . . This, it seems to me, is a misuse and desecration of the concept [of federalism] . . . . I have been shown nothing in the history of our Union, in the writings of its founders or elsewhere, to indicate that individual rights deemed essential by both state and nation were to be lost through the combined operations of the two governments.

6. S.613 precludes uniform application of the laws. As applied to labor disputes which erupt into violent activity, S.613 will protect only one class of property - that belonging to employers. We recognize that the mere fact that the government would choose to apply a criminal statute to only one class of persons does not violate the equal protection concept embodied in the Fifth Amendment.[20/] However, a statute such as S.613, which cannot by its terms be applied to all persons similarly situated, would deny to those persons prosecuted under the statute the uniform application of laws.[21/]

Conclusion

In conclusion, I must reiterate my strong objection to S.613. Beyond a first reading of this proposed legislation, it becomes painfully clear that the true motive of

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20/ United States v. Berrios, 501 F.2d 1207 (2d Cir. 1974); U.S. v. Cammisano, 546 F.2d 238 (8th Cir. 1976).

21/ Schlesinger v. Ballard, 419 U.S. 498 (1975); United States v. Cleveland, 503 F.2d 1067 (9th Cir. 1974); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

the supporters is not to guarantee symmetry in the laws but rather to bust unions. This conclusion is amply supported by the absence of evidence establishing that labor violence is pervasive, the existence of effective federal and state criminal laws already on the books, the uniform lack of support for the concept of federal intervention in labor violence by any law enforcement association, and the one-sided nature of the bill. Given these facts, it is most troubling to find that serious consideration could be given to a bill that will work such a fundamental change in the labor policy of this country.

Just one final observation: This Subcommittee has heard testimony from the National Right to Work Committee, which we consider a notorious enemy of the American worker and his interests.

The NRWC claims this bill is needed to "close loopholes" in the Hobbs Act and to subject Union officials "to prosecution for violence perpetrated in pursuit of extortionate objectives." (Emphasis added). But under Enmons "extortionate objectives" are already embraced within the definition of "extortion." We respectfully submit that by emphasizing "extortionate objectives," in the context of S.613, the NRWC reveals its true aim: it is a thinly-veiled attempt to outlaw eventually any activity in furtherance of the legitimate ends of collective bargaining. The focus is shifting from violence to prohibiting certain objectives of the trade union movement, namely better wages and working conditions for the American worker.

In the case of United States v. Enmons, 410 U.S. 396 (1973), the Supreme Court definitively rejected this broad definition of extortion. Justice Stewart said that this

> "broad concept of extortion--the 'wrongful' use of force to obtain even the legitimate union demands of higher wages--is not easily restricted. It would cover all overtly coercive conduct in the course of an economic

> strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine."

[Id., at 410]. There is no state today where strike violence is legal. As pointed out by Justice Stewart, a broad concept of "extortionate objective" in this law would grossly upset the balance between state and federal criminal jurisdiction. It would put the federal government in the business of policing all strike activity.

Even more alarmingly, it is but a short step from this bill to outlawing the legitimate goals of collective bargaining themselves. If enacted, the harsh penalties of this bill and its expansive objective would plunge the law, and the labor movement, backward more than a century, to an era where all associations of workers were condemned as criminal conspiracies. In the case of Commonwealth v. Pullis, an 1806 case now infamous as a Philadelphia Cordwainers' Case, the jury was instructed by the court:

> "A combination of workmen to raise their wages may be considered in a two fold point of view; one is to benefit themselves . . . . the other is to injure those who do not join their society. The rule of law condemns both."

3 Doc. Hist. of Am. Ind. Soc. 59 (2d ed. Commons 1910). The defendants in that case were fined eight dollars. The existing Hobbs Act contains penalties of $10,000 and twenty years' imprisonment.

We thank the NRWC for being so frank about its objectives in supporting this bill. The bill is an attack on the labor movement. Its emphasis is not upon violence, which we deplore, but on the so-called "extortionate objectives," a living wage and the better life of the American worker.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GREAT COASTAL EXPRESS, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Defendant.

Civil Action No.
5-71-R

MEMORANDUM

On the date of June 20, 1972, a jury returned a verdict in favor of the instant plaintiff against the defendant in the sum of $1,300,000.00.

On November 22, 1972, the verdict of the jury as to the amount of damages was set aside, and a new trial ordered, limited to damages. On April 20, 1973, at the conclusion of the trial on damages, the jury returned a verdict in favor of the plaintiff in the sum of $806,093.00. Judgment was entered in accordance therewith, and on appeal, taken by the defendant, the matter was affirmed by the United States Court of Appeals for the Fourth Circuit in an opinion filed April 2, 1975. Thereafter, on December 14, 1978, the defendant filed a motion to set aside the judgment, alleging that the "... plaintiff has perpetrated a fraud on this Court, the United States Court of Appeals for the Fourth Circuit and the National Labor Relations Board, causing its own equipment and the equipment of other trucking companies to be damaged by its own employees, and attributing these acts of violence to members of IBT affiliates"; and that "... the above-described fabricated acts have culminated in a judgment against the IBT. . . ."

Following extensive discovery proceedings, an evidentiary hearing was held on the union's motion on July 12 and 13, 1979. Thereafter, the Court entered an order denying numerous motions. The union appealed, seeking reversal of the Court's ruling, and thereafter, the United States Court of Appeals remanded the case to this Court with the direction that the Court supplement the record by findings of fact derived from the evidentiary hearing which had been held.

Pursuant to those directions, the Court makes the following findings of fact, incorporating therein, to the end that the Court's findings be read in their appropriate context, reference to certain of the prior proceedings.

At the evidentiary hearing upon the union's motion to set aside judgment for alleged fraud upon the Court, the union presented nine witnesses: (1) Robert G. Seward, a driver for Great Coastal during the strike; (2) Betty Seward, Robert Seward's wife; (3) William P. Funai, Great Coastal's Terminal Manager during the strike; (4) William Stagg, Jr., Great Coastal's Assistant Terminal Manager during the strike; (5) John Martini, a Great Coastal driver during the strike; (6) Samuel Rogers, a Great Coastal driver during the strike, presently employed by Great Coastal; (7) Mack Fifer, a Great Coastal driver during the strike, presently employed by Great Coastal; (8) Edmond Christian Nuckols, Jr., a Great Coastal employee during the strike; and (9) Carmello Thomas Tuminello, Supervisor and Dispatcher for Adley Express during the strike.

No witnesses were called on behalf of the plaintiff.

Charles E. Estes is presently President and owner of Great Coastal, and held those same positions during the strike. During the strike, William P. Funai, the Terminal Manager of Great Coastal, routinely reported any damage of Great Coastal equipment to Estes. Estes personally negotiated the profit-sharing arrangements between key managerial employees and Great Coastal. Funai was a key managerial employee who had direct supervision over the drivers, with the right to hire and fire drivers. Funai described himself as "the boss" of the terminal; a fact which corroborated the testimony of Seward. The drivers took their instructions directly from Funai, and Funai took his instructions directly from Mr. Estes. Funai was on profit-sharing during the strike, a status reserved by the company for managerial personnel. Funai, according to Great Coastal, was entitled to 2% of all Great Coastal profits in excess of $100,000.00 by virtue of his status as a manager; in fact, he received $12,024.22 as his prorated share of the IBT judgment.

Edward L. Flinn was manager of Great Coastal during the strike, and is presently a manager with the company. As a manager, Flinn, according to Great Coastal, was on profit-sharing during the strike, and was entitled to 2% of all of Great Coastal's profits in excess of $100,000.00. Flinn received $12,731.12 as his prorated share of the IBT judgment.

Robert Williams was Great Coastal's maintenance supervisor and shop foreman during the strike, a position which he presently holds. Williams was part of Great Coastal's management during the strike and was entitled to 2% of all Great Coastal profits in excess of $100,000.00. Williams received $12,822.69 as his share of the IBT judgment.

One morning during the strike William Stagg, Assistant Terminal Manager of Great Coastal, was told by C.E. Estes that he wanted to see Great Coastal's Terminal Manager, William Funai. Stagg, in turn, told Funai, who was at his desk adjacent to Stagg's, that Estes wanted to see him. In response to the message, Funai went directly to the second floor where Estes' office was located. In approximately ten to fifteen minutes, Funai came down the stairs and immediately told Stagg to get the pickup truck and go to Belk Floor Covering to relieve Robert Seward. Stagg had never before been asked to relieve any drivers during the strike and it was "very unusual" that the request was made in this instance inasmuch as other drivers were idle and available. Nevertheless, in accordance with Funai's instructions, Stagg got in the company pickup truck, and drove to Belk Floor Covering.

On that day, October 23, 1970, Robert Seward was unloading a truck at Belk Floor Covering in the City of Richmond when he was instructed by Stagg to go back to the terminal. Seward got in the pickup truck left by Stagg and went back to the terminal while Stagg finished unloading the trailer at Belk Floor Covering.

Seward went directly to the terminal office and reported to his boss, William Funai, who ordered Seward to get a brick or a rock, to take a truck to West Point, to break out the windshield of the truck and to "tear it up some". Funai and Seward discussed the fact that Seward was "going to break up the truck", was going to "shoot the truck" with a gun, and that Seward should wear gloves because "there might be fingerprints".

As instructed, Seward got a half brick off of the Great Coastal yard and drove a Great Coastal truck to Route 33 off Interstate 64, past New Kent, and pulled off the road. Seward, wearing gloves in an effort to avoid fingerprints, threw the brick at the windshield on the passenger side three times; the brick bounced off the windshield the first two times, but on the third blow crashed through its center. He then fired three shots into the front of the Great Coastal trailer using a small handgun - a cheap .22 caliber "Saturday Night Special".

Seward then proceeded on Route 33 to Green's Restaurant, called the terminal and spoke with Ed Flinn, but rather than tell Flinn the truth, Seward told a contrived story to the effect that unidentified persons had sabotaged the truck. Thereafter, the police arrived and Seward took the officer down the road to a point where a high bank rises from the highway and then levels off into the woods. Although that was not where Seward in fact had inflicted the damage, Seward, in telling his lie to the police, designated that as the place where a brick had been thrown at the windshield of his truck, where he heard gunshots, and where he saw men running from the bank away from the road through the woods. Later that same day Stagg and the employees at the terminal learned that Seward's tractor windshield had been knocked out and his trailer had been "shot up".

Seward executed a false affidavit concerning the New Kent incident, identified as IBT Exhibit 3. That affidavit was witnessed by Edward L. Flinn, and was specifically incorporated in Great Coastal's answer to IBT Interrogatory No. 14 as "direct evidence of specific instances of violence, intimidation and secondary boycotting activities which are recorded in written statements attached hereto". Great Coastal's answers to IBT's interrogatories were executed under oath by E.C. Estes, Great Coastal's President, and filed with this Court on March 25, 1971.

Seward gave a false affidavit concerning the New Kent incident, identified as IBT Exhibit 4, to a representative of the National Labor Relations Board. Seward also testified falsely about the New Kent incident in a proceeding before the National Labor Relations Board.

Seward was called as a witness for Great Coastal at the trial before this Court on June 15, 1972. He falsely testified that he was driving toward New Kent in October 1970 when a brick came through the windshield on the passenger side, and that he saw men running away through the woods. Seward admitted at the hearing in July, 1979 that he gave perjured testimony before this Court in 1972.

William P. Funai was called as a witness for Great Coastal at the trial before this Court on June 15, 1972 and testified that during the strike he went to West Point, Virginia to look at a Great Coastal truck and saw "[t]he front windshield was broken on it" and there was "a small hole" in the trailer which looked like it was caused by "a shot, a small caliber gun". When asked in 1972 whether he "saw anybody do anything to that truck", Funai answered, "I seen the damage . . . and nothing else". Funai now concedes that he failed to "tell the truth, the whole truth, and nothing but the truth" in his 1972 testimony; he admits that he failed to tell everything he knew about the New Kent incident to the Court and he therefore violated his sworn oath before this Court. When Funai asked whether he told Seward to sabotage his equipment, Funai refused to answer "on the grounds that the answer may tend to incriminate me".

The Court's conclusion as to Seward's having testified falsely at the first trial is made independent of Funai's exercise of his right against self-incrimination.

Edward Flinn is presently manager at Great Coastal and was also manager at the company during the strike. Some time in 1978 Robert Seward spoke with Ed Flinn at the Great Coastal terminal and told Flinn the truth about the New Kent incident. Flinn stated to Seward that at one time he, Flinn, was trying to trace down the New Kent incident, but someone told Flinn to "lay off" because he was "getting close to something in his investigation". The Court's finding in this regard is admittedly prompted by the absence of any testimonial denial on the part of the plaintiff.

When Local 592 struck Great Coastal in 1970, Adley Express, a trucking company in the Richmond area, enjoyed a greater demand for its services and began hiring extra roadmen who were out on strike against Great Coastal. After the strike began, Ed Flinn, manager of Great Coastal, placed a telephone call to Carmello Thomas Tuminello, dispatcher at Adley. Flinn wanted to know who was in charge at the time, and Tuminello responded that he was. Flinn said, "I'd like to see if you could do us a favor" and asked if Adley was "running any extra road drivers that are out on strike that work at Great Coastal". When Tuminello responded that Adley was running six or seven of them every night, Flinn asked if Adley "could stop running the roadmen on the road, so we could starve the sons of bitches out and make them come back to work at Great Coastal". Flinn went on to say that this would help Great Coastal "get rid of the union". Tuminello told Flinn that his boss, the terminal manager, who was not there at that moment, said the men were qualified drivers, Adley needed extra men, and he would continue to run them until he had further notice from his own boss.

During the strike Seward was ordered by Funai to go to Adley and East Coast to "punch tires and tear up trucks" [Tr. 40, 95 (Seward)]. Funai handed three "punches" to Seward that were prepared in Great Coastal's maintenance shop and sent him to a motel in Richmond to wait for the other members of the "raiding" party.

That night Seward was met at the motel by three other Great Coastal employees, Sam Rogers, Mack Fifer and Chris Nuckols, and together, upon orders from Funai, they went on a "raid" to Adley, driving to Adley in Nuckols' car. Seward, Rogers and Nuckols punctured tires while Fifer slashed the air hoses off the Adley trucks. Tuminello spotted the four marauders under the Adley trucks while making a yard check, but by the time he returned with assistance, all he found were punctured tires and slashed air lines on the Adley equipment. Tuminello noted that one was wearing a Great Coastal jacket and later recalled the identity of one of them as "Seward".

Thereafter, similar acts of vandalism were conducted by Seward and Nuckols at the East Coast Freight yard. Seward was corroborated in regard to these acts by several witnesses.

During the strike Funai asked Seward to shoot the windows out of the Great Coastal office with an old double barrel shotgun. Seward declined because there were pickets nearby and the police were also in the vicinity.

Also during the strike, Funai instructed Seward and Chris Nuckols to purchase a slingshot for the purpose of breaking truck windshields. The testimony of Seward in this regard is corroborated by Nuckols. Seward and Nuckols purchased a slingshot from a sporting goods store, and Seward was with Funai, the Terminal Manager, when Funai submitted a ticket to Great Coastal petty cash for reimbursement of the slingshot. Seward and Nuckols tried to use the slingshot in the Great Coastal yard to break the windshield of Great Coastal trucks, but their efforts were to no avail because the shot could not be propelled with sufficient force to damage the windshield glass.

During the strike Martini heard Estes and Flinn express their appreciation to the drivers for their "irritation and agitation" of the pickets. Martini also heard Estes and other officers of Great Coastal express appreciation when Great Coastal trucks would come in damaged. In response to an inquiry from the Court on the attitude of Great Coastal managers about damage to the trucks, Martini testified that when damaged equipment came into the terminal, these officials would say words to the effect that, "this is what we need".

On November 24, 1971, as a result of an election, the National Labor Relations Board decertified Local 592 as representative of the Great Coastal employees. Seward had, at the request of a Great Coastal manager, been active in seeking the decertification of the union.

Within three weeks of Great Coastal's elimination of the union, Estes called Seward into his office and handed Seward $500.00 in cash. At that time, Estes said to Seward, "keep it to [your] self", and told Seward he could "call it a Christmas bonus or pay for a job well done". This $500.00 payment is no where reflected on the company's books and records. Certain of the company's records for the relevant time period have been destroyed, but Great Coastal's custodian of records has no recollection of the circumstances underlying the destruction of those documents.

Emmett Williamson, Great Coastal's Treasurer and General Manager, testified that during the strike each "managerial" employee who was on profit-sharing with Great Coastal was "reassured by the company that he would receive his agreed percentage of profits if the company were later to recover damages from the union".

Notwithstanding the company policy that a manager on profit-sharing must have been with Great Coastal at the time of recovery against the IBT, William P. Funai, in July 1976 - more than five years after Funai had left the employ of Great Coastal - received $12,024.22 ($8,927.99 net after-tax dollars) as his share of Great Coastal's recovery against the IBT.

The Court is satisfied and finds as a fact that much of the testimony offered by the plaintiff in the first trial dealing with the alleged acts of violence by the defendant was perjured.

Just as the perjurors are, regrettably, free from prosecution for perjury by virtue of the statute of limitations, the one year limitation precludes the instant defendant from relief under Rule 60(b)(3) for the reasons stated in the Court's memorandum of February 29, 1980.

Let the Clerk send copies of this memorandum to all counsel of record, and return the records in this cause, along with this memorandum, to the United States Court of Appeals for the Fourth Circuit for such action as it may deem appropriate.

UNITED STATES DISTRICT JUDGE

Date: AUG 27 1981

Senator SPECTER. Our next witness is John P. Rupp on behalf of the American Civil Liberties Union.

STATEMENT OF JOHN P. RUPP, COVINGTON & BURLING, REPRESENTING THE AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY SCOTT GILBERT, COVINGTON & BURLING

Mr. RUPP. We have submitted a prepared statement on behalf of the American Civil Liberties Union, presenting the views of the ACLU, on S. 613 and we respectfully would ask that that statement be read into the record of these hearings.

Senator SPECTER. It will be made a part of the record in full. Our practice is to summarize, giving the maximum time for questions.

Mr. RUPP. Thank you very much.

For the reasons stated in my prepared statement, to summarize briefly, the ACLU is opposed to enactment of S. 613.

We believe that the bill, if enacted, would chill legitimate labor activities in ways that have not been and cannot be justified. We believe further that the sheer breadth and ambiguity of the bill's provisions virtually insure inconsistent enforcement—and we despair of any efforts to narrow the bill so as to cure the problems that we have identified.

At the same time, we do not believe that a persuasive showing has been made for an extension of the Hobbs Act to cover violent or threatening conduct occurring in the course of legitimate labor disputes. We believe that such a showing is an essential, even if not alone a sufficient, predicate for a bill like S. 613, which presents, we are convinced, a substantial risk of interfering with associational and other first amendment rights of union members.

I would be pleased to respond to any questions that you have, Senator.

Senator SPECTER. With regard to first amendment rights, do you think that this bill will be construed more strictly because it does—

let me back up and ask you, to which first amendment rights do you refer, speech, picketing?

Mr. **Rupp**. We have two rights or interests primarily in mind.

First, the general right of association—the general right involved in cases like the *Philadelphia Cordwainers* case, which ignored the right of people to work together for legitimate goals.

Second, we are concerned about free speech rights, classic first amendment rights. Picketing is one expression of those rights.

Senator **Specter**. How do you have legitimate first amendment rights if you engage in assaultive conduct?

Mr. **Rupp**. Assaultive conduct is not protected by the First Amendment.

Senator **Specter**. Unless there are "fighting words."

Mr. **Rupp**. Even then, perhaps not.

But our concern is broader than that, Senator. It is that faced with a law written as broadly as this one, a law as difficult to understand as this one is, a law that has penalties as severe as the penalties in this bill, union members will refrain from engaging in rights that are entirely legitimate and appropriate because of fear of what can happen because of the activities of others or because of being swept away by personal emotions in the heat of the moment.

Senator **Specter**. Would your concern evaporate if the penalties, if the penalty provisions said that the penalties under this act can be the same as for assault and battery in the jurisdiction where the act was committed?

Mr. **Rupp**. No, they would not, Senator.

Senator **Specter**. Why not?

Mr. **Rupp**. Because we think——

Senator **Specter**. What would be left of the problem of a statute if it were not for the potentially chilling effect of the extreme penalty potential?

Mr. **Rupp**. Senator, in several respects this bill would be significant beyond the laws as they now exist—the laws of the States that have laws covering those subjects, and all do. Let me give you an example.

This bill, S. 613, would amend subsection (b)2 of the Hobbs Act to include the phrase, "wrongful use of fear not involving force and violence."

I am at a loss to understand precisely what that phrase means.

Senator **Specter**. The phrase is what?

Mr. **Rupp**. "Wrongful use of fear, not involving force or violence."

Senator **Specter**. Where are you reading from?

Mr. **Rupp**. From page 2 of the printed bill, the phrase that I have quoted would operate as an amendment to subsection (b)2 of the Hobbs Act.

Senator **Specter**. You are talking about "wrongful use of fear"——

Mr. **Rupp**. Not involving force or violence. Labor disputes, by their very nature, often involve misapprehension of the motives of the opposition, fear, certainly, and unhappiness that the dispute is occurring; the ability of people to translate this into an excuse for intervention in a lawful labor dispute not involving force or violence is for us a substantial threat.

Senator SPECTER. Is wrongful use of fear comprehended under State criminal codes?

I certainly do not know of such a provision.

Mr. RUPP. I think for the most part it is not.

Certainly, this phrase—which again I must say I don't quite understand—doesn't appear in the Hobbs Act as it stands today.

Senator SPECTER. Suppose we took that phrase out and made the penalties the same as for assault and battery in the State law, what would you say then?

Mr. RUPP. I would still have to oppose.

I can go on and give you further examples of substantive provisions that are unjustified.

Senator SPECTER. Go ahead.

Mr. RUPP. I think, for example, that no case has been made for the two new crimes that are created by the first portion of the bill, assault and property damage.

Senator SPECTER. Where are you reading from now?

Mr. RUPP. From subsection (a), which begins on page 1 of the bill print I have.

And going over to the first half of the second page. I note that the Justice Department has not supported this aspect of the bill—and for good reason.

Senator SPECTER. "Willfully damaging $1,500 or more of property, including real property."

Do you think that is a problem provision?

Mr. RUPP. Senator, I can conceive of no legitimate Federal interest, certainly no unique Federal interest, perhaps better put that way, overriding or paramount Federal interest, that would justify making this provision part of the Federal Criminal Code and thrusting the Government into circumstances of these sorts.

Senator SPECTER. Well, there are provisions of State and criminal statutes which cover that kind of conduct?

Mr. RUPP. That is correct, sir.

And, indeed, those provisions for the most part do not contain a minimum threshold.

Senator SPECTER. The point that I am coming to is, if you take a good bit of the statute, perhaps most of it, it is comprehended under State law at the present time, is it not?

Mr. RUPP. That is correct.

Senator SPECTER. And the distinction that was previously made about the penalty, I think, is a good objection. Perhaps the Federal Government has no business in this field at all, or perhaps it is just a matter of symbolism if this really comes down to just what can be done under State law.

It may be that some just do not want to see the Federal Government in this field, because this is a tougher administration, maybe a signal there is going to be stronger prosecution. It may be that much of this conduct is reachable now by State criminal prosecutions. If so, how really undesirable is it to have a prosecution in Federal court, is it worse to be prosecuted in Federal court than State court, if the provisions are essentially the same?

Mr. RUPP. Well, Senator, if I may make a couple of points in response.

First, not only do we have overlapping jurisdictions in the State, concurrent jurisdictions, if you will, over most of the matters that are covered here, the serious matters that would be covered here.

The most serious matters that could be covered by this bill also are covered by Federal statute—18 U.S.C. 844, section——

Senator SPECTER. We do not need it at all? It's already covered?

Mr. RUPP. I don't think so.

Senator SPECTER. On the other hand, if it is already covered, what is the harm?

Mr. RUPP. The other Federal statutes I am talking about, the exceptions I will come to in a moment, are more specific than this bill is. Its provisions are more carefully and narrowly drawn, the penalties are different.

Senator SPECTER. But the penalties there are lesser?

Mr. RUPP. Lesser, yes.

Senator SPECTER. The RICO penalty is pretty strong.

Mr. RUPP. Even the RICO penalties, depending on the circumstances, are probably less.

Senator SPECTER. They are progressive for prior convictions?

Mr. RUPP. They are.

Senator SPECTER. Rather be prosecuted under RICO than this one?

Mr. RUPP. I would not like to be prosecuted under any of these statutes.

I probably shouldn't speak for others in that regard.

Senator SPECTER. You are not going to do anything to get into that situation.

Mr. RUPP. Both the Travel Act and RICO do have extortion provisions, which pose some of the problems presented by S. 613.

Senator SPECTER. What are the extortion provisions under the Travel Act as you recollect?

My counsel tells me the Travel Act generally applies to travel in interstate commerce to promote or commit such offenses as arson.

Mr. RUPP. Yes, but the Travel Act also has a subdivision, which is subdivision (d)2, which covers extortion, bribery or arson in violation of the State law in which committed, or of the United States. I believe that provision was—has been discussed—in most of the committee reports that have been associated with prior——

Senator SPECTER. Extortion by violence?

Mr. RUPP. Yes.

Senator SPECTER. Do you know of any cases where it has been so held?

Mr. RUPP. I do not believe that this provision has been used in the context of labor violence; nor am I aware of a case, frankly, in which the RICO extortion provisions have been so used.

Senator SPECTER. Well, thank you very much for your statement, and for appearing here, and for making this contribution.

I think it is fine that you are willing to contribute your time and your talent to these causes.

Mr. RUPP. Thank you, Senator.

Senator SPECTER. Thank you very much.

[The prepared statement and summary of Mr. Rupp follow:]

PREPARED STATEMENT OF JOHN P. RUPP

Mr. Chairman, and members of the Subcommittee, my name is John P. Rupp. I am a partner in the Washington, D.C., law firm Covington & Burling. With me today is Scott Gilbert, an associate of our firm. We are appearing at the Subcommittee's invitation to express the views of the American Civil Liberties Union on S. 613, which seeks to amend the Hobbs Act to cover legitimate labor disputes. The ACLU is a nonpartisan organization with approximately 250,000 members.

While there are areas of sharp disagreement between proponents and opponents of S. 613, all who have appeared before this Subcommittee are united on at least one point: their condemnation of the use of force or violence, or threats of force or violence, in connection with labor disputes. Like those who have appeared earlier, the ACLU believes that such conduct should be subject to vigorous prosecution and effective punishment. At the same time, however, we do not believe that a persuasive showing has been made of the need for S. 613 -- and, even more significantly, we are deeply concerned about the civil liberties implications of the bill.

From its earliest days, the National Labor Relations Act has been regarded widely, and with justification, as a fundamental charter of economic freedom -- guaranteeing to the millions of workers in this country a limited voice in the myriad decisions affecting the terms and conditions of their employment. The history of labor/management relations in this country in the years preceding enactment of the National Labor Relations Act hardly needs to be recounted here: the fact is that violence, and threats of violence, were used too often by workers denied effective associational rights to redress their unequal bargaining power.

The National Labor Relations Act gave statutory recognition to, among other things, the rights of association and free speech guaranteed by the First Amendment. But that Act did not approve, or immunize from prosecution, "contemporaneously violent conduct." Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 292 (1941). Consistent with the scope of the underlying constitutional principles, violent conduct -- even if occurring in the context of an otherwise legitimate labor dispute -- has been defined under the Act as an unfair labor practice. Despite the Act's preemption provision, moreover, it always has been clear that the states remain free to punish violent acts committed by parties to labor disputes. Indeed, as has been pointed out by several of the witnesses who have appeared before this Subcommittee, the Hobbs Act as amended by S. 613 would not reach any conduct not already subject to criminal sanctions under federal, state or local law. See, e.g., 18 U.S.C. §§ 844 and 1952.

The Supreme Court's decision in United States v. Enmons, 410 U.S. 396 (1973), which would be overturned by S. 613, must be read against this backdrop. The Enmons decision did not create, as some have charged, a loophole in the National Labor Relations Act: the conduct described in S. 613 clearly would constitute an unfair labor practice whenever engaged in as part of a labor dispute covered by the Act. Neither did the Enmons decision create, as has been suggested, immunity from prosecution for violent acts committed in pursuit of legitimate union objectives: such conduct remains subject to a full panoply of federal, state and local criminal laws. Despite the heat that Enmons has generated, that decision holds only that the Hobbs Act --

a single federal statute -- does not reach the use of threatened force or violence to achieve legitimate, as opposed to illegitimate, collective bargaining demands.

As I already have mentioned, the ACLU does not believe that a persuasive showing has been made of the need for S. 613 -- of the further need to draw the federal government into the business of prosecuting the occasional violent conduct that occurs in connection with otherwise legitimate labor activities. That dispute has been joined already in the testimony given in December 1981 by Mr. Laurence Gold on behalf of the AFL-CIO. But even if one assumes the need for some additional enforcement, the ACLU nevertheless would oppose S. 613 on civil liberties grounds.

The vice of S. 613, considered from a civil liberties perspective, is that it would bring within the ambit of the Hobbs Act, and would chill, entirely lawful labor activity. In fact, the sheer breadth and ambiguity of the bill's substantive provisions virtually ensures selective and inconsistent enforcement. Although we understand that the Department of Justice has offered to work with the Subcommittee to narrow the bill's reach, we do not believe that the problems we have identified can be cured by amendment.

The proponents of S. 613 have argued, as did the government in Enmons, that the scope of this legislation is limited -- that it is not intended to and will not reach the kinds of minor and incidental picket line violence or threats of violence about which the Supreme Court was concerned in Enmons. See 410 U.S. at 411. But S. 613 contains, on its face, no such limitation; and it is as difficult for us as it was for the Court in Enmons to conceive of a rational limiting principle. Is a single violent act, however aggravated the circumstances or tragic the result, to be immune from federal prosecution -- while a series of minor transgressions are brought within the reach of the Hobbs Act? If more than one violent act, or threat of violence, is required, need the acts be separated in time or would a melee involving several persons satisfy the applicable test? And how does one define "minor" or "incidental" -- in terms of the injury that occurs or is threatened or the result that is sought to be achieved? These questions are no less pertinent now than they were when the Supreme Court considered the reach of the Hobbs Act in Enmons. And they are of no less concern. As Justice Blackmun stated in his Enmons' concurrence (410 U.S. at 412):

> The Government's posture with its concession that certain strike violence (which it would downgrade as "incidental" * * *), although aimed at achieving a legitimate end, is not covered by the Act, necessarily means that the legislation would be enforced selectively or, at the least, would embroil all concerned with drawing the distinction between major and minor violence. That, for me, is neither an appealing prospect nor solid support for the position taken.

The prospect for selective and inconsistent enforcement under S. 613 looms large, and is no more appealing now than it was a decade ago when the Supreme Court was confronted with Enmons.

The position of the Justice Department with respect to enforcement of S. 613 does little to allay our concerns. Administrations change, enforcement policies are altered over time, and the simple fact is that all manner of strike or picket line conduct tending toward violence or intimidation could be prosecuted under the Hobbs Act if S. 613 is enacted. As in the obscenity area, the range of activities covered by S. 613 depends, to an intolerable extent, on the eye of the beholder. There is, for example, an extremely fine line between entirely legitimate concerted conduct on the part of labor, designed to force employer concessions, and the use of threatened force or the fear of threatened force to reach permissible objectives. Are union members to be vulnerable to prosecution under an amended Hobbs Act whenever an employer is able to point to statements by a few individuals suggesting a willingness to engage in violence to settle a particular dispute? Or is there to be a kind of "rule of reason" engrafted onto the federal criminal code, requiring the Justice Department to stay its hand whenever a reasonable man might conclude that the employer's fears were not justified? It also must be recognized that S. 613, like the present Hobbs Act, proscribes not only acts of extortion or violence but inchoate conduct as well -- any attempt or conspiracy to engage in extortion or violence, or conduct threatening or inducing a fear of such activity.

The ACLU would be concerned about provisions such as these in any criminal statute. A fundamental rule of criminal law is, of course, that men of average intelligence and sensibility should not have to guess at a law's scope or meaning -- particularly where the law carries penalties as severe as those contained in S. 613. But S. 613 significantly heightens these concerns because it applies to labor disputes -- which often occur without careful advance planning, sometimes raise high emotions, and almost always involve issues of immediate and substantial importance to the disputants. The labor context is, in short, a context in which a misreading of the motives or goals of one's opponents may qualify as the rule rather than the exception. S. 613 would thrust the federal government into the center of these disputes, to the detriment, we are convinced, of the associational and free speech rights of the organized American worker.

The problems that we see in S. 613 would not be eliminated by a "reasonable" enforcement policy on the part of the Justice Department or United States Attorneys Offices around the country. Nor can our concerns be discounted because the conduct covered by the Hobbs Act, as amended by S. 613, already is subject to criminal sanctions under federal, state or local law. One of the evils of an overbroad or ambiguous criminal statute is that it invites investigations that cannot be justified, and those subject to the act are left at the mercy of hopefully enlightened prosecutorial discretion. If S. 613 is enacted, we must expect employers to view the Hobbs Act as another, extremely potent, weapon in their arsenal -- and calls for investigation and prosecution, even if prosecution is not initiated, would constitute an ever-present threat.

Under S. 613, federal investigators of alleged strike-related conspiracies could reach back to meetings at the union hall -- and the details of union meetings, including who was present and what was said, could become subject to federal scrutiny. Because of the attempt and conspiracy provisions of the Hobbs Act, a union member would never know, when deciding whether to attend a union meeting, whether something might be said at the meeting that could subject that member, at the very least, to investigation by the federal government. Moreover, for those individuals who may become involved in isolated, and often minor, incidents of strike-related violence, the possible penalties under S. 613 are enormous: threats of violence, or inducing a fear of violence, may expose the union member to a fine several-fold his annual wages and to imprisonment for up to ten years. If enacted, S. 613 can be expected to cause many union members to think twice before engaging in organized labor activities -- to be unduly concerned with a Hobbs Act prosecution if things were, in any way, to get out of hand in a strike situation.

Our concerns cannot be discounted simply because the conduct described in S. 613 already is subject to criminal sanctions under federal, state or local law. Many of the laws already in existence are more carefully drawn than S. 613; and, even if not more carefully drawn, have been elaborated over time -- in cases and by a host of prosecutorial decisions -- in ways that clarify their meaning. Further, with the notable exception of the relevant federal laws, which were enacted to serve limited but paramount federal interests, the penalties that may be imposed for strike- or labor-related misconduct under existing laws are generally less severe and threatening than the penalties that could be imposed if S. 613 were enacted. At the same time, we are not aware of any persuasive evidence that those generally less severe penalties have been ineffective. Finally, the mere threat of a federal investigation or prosecution, backed by what is often perceived to be the awesome powers of the federal government, can be expected to chill entirely legitimate labor activities in ways not affected by state or local laws.

For all of these reasons, the ACLU opposes enactment of S. 613. Minor, even ingenious, surgery of the sort suggested by the Justice Department, could not cure the problems that concern us. Before involving the powers of the federal government in an area permeated by the First Amendment, and hazarding a diminution of those rights, those supporting S. 613 should be expected, at the very least, to make a persuasive showing of need that cannot be satisfied in other, less drastic, ways. We do not believe that any such showing has been or could be made, or that S. 613 is the proper antidote even assuming a need for further enforcement of the laws covering labor misconduct.

That is the end of my prepared statement. I would be happy to respond to any questions members of the Subcommittee may have.

Summary Of ACLU Testimony On S. 613

The ACLU strongly condemns the use of force or violence in connection with labor disputes and believes that such conduct should be subject to vigorous prosecution and effective punishment. We do not believe, however, that a persuasive showing has been made of the need for S. 613, and we are deeply concerned about the civil liberties implications of the bill.

It must be recognized at the outset that violent conduct, even in the context of an otherwise legitimate labor dispute, would constitute an unfair labor practice under the National Labor Relations Act and also would be subject to criminal sanctions under existing federal, state or local law. Thus, the Enmons decision did not create, as some have charged, either a loophole in the National Labor Relations Act or immunity from prosecution for violent acts committed in pursuit of legitimate union objectives.

Even if one assumes the need for some additional enforcement, however, S. 613 is seriously defective from a civil liberties perspective. The sheer breadth and ambiguity of the bill's substantive provisions virtually ensures selective and inconsistent enforcement. Coupled with the bill's far-reaching attempt and conspiracy provisions and severe criminal penalties, S. 613 can be expected to chill entirely legitimate labor activities in ways not affected by existing laws.

The ACLU also believes that the very nature of labor activities, involving the exercise of First Amendment rights in circumstances that often are emotionally charged, precludes a narrowing of S. 613 intended to cure the problems that we have identified. Accordingly, the ACLU opposes S. 613.

Senator **Specter**. Ladies and gentlemen, the hearing is now adjourned.

[Whereupon, at 11:43 a.m., the subcommittee was adjourned.]

APPENDIX

PROPOSED LEGISLATION

97TH CONGRESS
1ST SESSION

S. 613

To amend section 1951 of the United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, FEBRUARY 16), 1981

Mr. THURMOND (for himself, Mr. EAST, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend section 1951 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1951 of title 18 of the United States Code is amended as follows:

(a) Subsection (a) is amended to read as follows:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by—

"(1) inflicting, or threatening to inflict, death or serious bodily injury on any person;

"(2) willfully damaging to the extent of $2,500 or more any property, including real property, used for business purposes; or

"(3) engaging in robbery or extortion as defined in subsection (b);

or attempts or conspires to do so, shall, if death results, be subject to a fine of $250,000 or imprisoned for any term of years or for life; or, if bodily injury results or the property damage exceeds an aggregate value of $100,000, shall be subject to a fine of $250,000 or imprisoned not more than twenty years, or both; or, in any other case, shall be subject to a fine of $100,000 or imprisoned not more than ten years, or both.".

(b) Subsection (b)(2) is amended to read as follows:

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by use of actual or threatened force, violence, or fear thereof, or wrongful use of fear not involving force or violence, or under color of official right.".

(c) Subsection (c) is amended to read as follows:

"(c) Nothing in this section shall be construed as indicating an intent on the part of the Congress—

"(1) to repeal, modify, or affect section 17 of title 15, sections 52, 101 through 115, and 151 through

166 of title 29, or sections 151 through 188 of title 45; or

"(2) to exclude Federal jurisdiction over the offenses defined in this section on the ground that the conduct is also a violation of State or local law, or that the conduct, if it involves force, violence, or fear thereof, takes place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective.".

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ADDITIONAL STATEMENTS FOR THE RECORD

PREPARED STATEMENTS SUPPLIED BY AMY E. CONN
Public Information Officer
HIGHLANDS REGIONAL MEDICAL CENTER

My problems with the 1199 union at Highlands began about a month before the 3½ month strike against the Medical Center. I was threatened by a very large nurse aide who said "they were going to get me for what I was doing with the radio stations." I believe the union people were angry because they had taken press releases with wild claims in them to local radio stations and the news directors called me to verify the information. After checking, they did not air the releases. I was very scared by this incident and began to carry mace in my purse. Many other people received threats and other annoyances such as finding dead birds on their car seats. I had no idea what a frightening ordeal lay ahead.

Prior to the strike, union members pulled fire alarms, called in a bomb threat and were generally disruptive and destructive in the Medical Center. On the first evening of the strike, many non-union employees chose to stay in the hospital rather than attempt to cross the picket line which numbered almost 300. It was nearly impossible and very dangerous to get through the line. They threatened to turn over cars which crossed. They sprayed paint & acid on vehicles, beat on them with baseball bats & signs, broke windows with rocks, laid tacks & slashed tires, scraped nails on cars, threw eggs & coal and employed many other threatening and vandalistic tactics. They screamed, cursed and tried to open car doors also. This continued daily throughout the strike.

We came to dread facing the line twice daily. We would lock the doors and roll up the windows as we rounded the corner in anticipation. We constantly looked in the rear-view mirror to see if we were being followed. When we saw a union car tailing us, which was relatively common, we drove to the police station and waited until the union people left.

They seemed to learn new tricks weekly to obstruct the entry & exit of working employees. We were told that copies of "The Anarchists Handbook" were distributed to striking workers and movies of other violent strikes were shown. One such movie showed picketers firing shots & clubbing people "for the cause."

I was naive enough to believe that the police would protect us from this violence. This could not have been further from the truth. We took photographs to the courthouse to show the judge that his injunction was being ignored and that destruction was continuing. The police said they could do nothing unless they saw the crime and soon tired of our phone calls for help. As evidenced by a photo showing tires being cut even while a policeman was present, very little help was given. As a matter of fact, a few non-union employees were given tickets for not completely stopping at the stop sign in the midst of all the picketline destruction.

Other strike activities included threatening & obscene phone calls at home, gun shots into homes, cars and several into the hospital. Some security guards were beaten with baseball bats and their videotape camera destroyed. A guard was beaten by 5 women picketers at the courthouse when he went to testify.

The damage from this strike is much deeper than the multitude of physical evidence. The professional, caring image of our staff has been tarnished by the long seige of violence. Community members have expressed a fear of being cared for by people who could be so cruel and destructive. A number of employees quit during the long labor dispute and lost their seniority. Marriages during this tense time were strained and some ended for employees on both sides of the line. Striking employees lost houses and cars. The Medical Center lost revenue and patients. It was a nightmare and bitter feelings continue.

Amy C. Conn

Amy E. Conn
Public Information Officer

AFFIDAVIT

The affiant, Helen Smith, after being duly sworn, deposes and states as follows:

My name is Helen Smith and I am employed as Personnel Assistant in the Personnel Department of the Highlands Regional Medical Center.

The National Union of Hospital and Health Care Employees, Local 1199, has been on strike against the Medical Center since March 25, 1981. The Union and strikers have been engaged in numerous acts of violence since the strike began. One of the strikers, Geneva Skeens, was found in contempt of court for violating an Order of the Floyd Circuit Court. Mrs. Skeens and her sister, Gwen Calhoun, have engaged in various acts of misconduct during the entire period of the strike.

On Friday, May 1, 1981, I went into Thompson's I.G.A. grocery store in Prestonsburg, Kentucky at approximately 5:00 p.m. I picked up a loaf of french bread, then went to the fresh vegetable aisle. As I entered the aisle I heard someone say, "Scab! Scab!" I looked up to my right and saw Geneva Skeens standing there. She called me a "Bitch". I moved on toward the vegetables. A voice to my left asked, "Who's she?" Geneva said, "Helen Smith, a bitch in Personnel." I glanced to my left and saw Gwen Calhoun. I proceeded to the vegetable bin and started looking at tomatoes to avoid a confrontation. Geneva and Gwen came in behind me. They stood there and called me "Scab" and "Bitch" several times. They then made some remarks about "my days being numbered" and "we're waiting for you." I discussed the quality of the tomatoes with some lady until I no longer heard Geneva and Gwen. I then moved up the aisle to mushrooms, glancing around to see that they were gone. I picked up a package of mushrooms and went straight to the quick check out lane. The clerk put my groceries in a very small bag and the bread stuck over the top. I went outside, looked around quickly, did not see Geneva or Gwen and started up the sidewalk. I got out my car keys, tried to close my purse as I started across the road. The keys were on a wire ring and it stuck my fingers so I looked at my purse catch. I heard "Scab", looked up and Geneva was walking toward me. I could see Gwen and a tall man about three cars over in the parking lot straight ahead of me. Geneva said, "Bitch". She asked me a question but I could not understand what she said. She repeated it. I said, "Just let me alone." She was within three feet of me. She then said, "Helen, you bitch, I'll get you." My purse started to slip from my shoulder and the bread fell over and I started to loose the bag of groceries. I grabbed at the bread. Geneva grabbed my right arm with her left and started hitting me with her right. She hit the bread and knocked the bag out of my arm. She was yelling and calling me names and hitting my face on the left side with her fist. I pulled away and dropped my purse. She grabbed at my coat with her right hand and hit me with her left. She jerked my coat and it knocked me down. She started beating me on the left side of my face and head with both fists. I heard Gwen say, "Don't hit my sister, you bitch." Gwen repeated this several times as she was beating me with both fists on the face, neck, and head. Gwen then said, "I'll kill you." She said this several times and each time she would beat my head against the road. I yelled for someone to call the police. A man's voice said, "Who's she?" and Gwen said, "She's one of Don's shit assistants." Gwen then said, "Kill her, kick her." and Geneva said, "Kill her." A man started kicking me and he said, "Don't you ________." I never heard the ending because each time Gwen hit me in the ear. I looked up at the crowd and three or four times again yelled for someone to call the police. Someone kicked me in the neck and shoulders then stopped. I tried to get up and some man helped me. He told me to lean on the post. I looked at him and his mouth was bleeding. Geneva, Gwen and the man had moved over to a car. The police were getting out of a car. A woman said, "I have E.M.T. training" and she and a policeman helped me to sit down in the back seat of the cruiser. The policeman asked me my name and where I worked. I told him. He said, "I knew something like this would happen." I asked who the man was who had been kicking me and several people yelled, "Henry Calhoun." A woman in the crowd handed me a paper towel to wipe the blood from my face and eyes. I had more conversation with the police. The man with the bleeding mouth called to the policeman about arresting Henry Calhoun. The policeman told him we'd have to take out a warrant. Someone said I needed medical attention and the E.M.T. got in the car with me. I asked them to call Don Nunnery, the Medical Center's Personnel Manager, at the hospital and tell him what had happened. They took me to the police station and said they'd call an ambulance to take me to the emergency room. I was given oxygen and an ice pack for my face. I asked about the ambulance. The policeman said they had called the ambulance but they refused to come. Said they didn't want to get involved. I said, "Did you call Don?" and he said he had. Within three minutes Don and Phil Damron, the Medical Center's attorney, arrived and took me to the hospital for treatment of the severe injuries which I received about the eyes, head and body. Gwen Calhoun and Geneva Skeens were the two female strikers who attacked me together with their father, Henry Calhoun. The attack was completely without provocation and could easily have resulted in my being beat to death had the one gentlemen and the police not arrived in time.

I have given this affidavit of my own free will and everything I have said herein is true and correct.

Helen Smith
Helen Smith

Subscribed and sworn to before me by Helen Smith to me personally known, on this 11 day of May, 1981.

Maxleete Patton
NOTARY PUBLIC
STATE AT LARGE, KENTUCKY

My commission expires 4-17-82.

Statement of beating on 5-1-81 at 5:30 - 5:45 p.m.

I saw 2 people beating on a lady as I drove into Heck's Plaza. I had my window down. I pulled over and parked. I heard the big fat girl (Gwen Calhoun) say to the lady on the ground, "I'll kill you. I'll kill you. I'll kill you." Each time she repeated that, she beat the lady in the head with her fist. The lady was trying to cover her head with her arm. The lady had hold of the short girl's (Geneva Skeens) blouse. That girl was holding her blouse with one hand and hitting the lady with the other hand. I walked toward them from my car. I could see the lady was bleeding from the head. The large girl then got up and started kicking the lady in the head. I said nothing as I approached - in disbelief that no one was doing anything to help. The fat girl also was grabbing the lady's hair and constantly talking abusively to her. I was about 5 feet away. The fat girl kicked the lady 3 more times in the head and then I took one step toward her. Both of the girls then moved away from the lady on the ground, and moved toward an older man (who was behind me). I watched the girls move away. Both girls were looking at me. The short one said "buzz off." I turned ¼ turn to my right watching the girls walk toward the man. Just as the man came into my line of vision, his fist came to my mouth. My head was knocked back and my hat off. I picked up my hat and said to him, "you crazy mother fucker." Those were the only words I had spoken. Then a police car came into the shopping center. I turned away to go help the bleeding lady on the ground. I helped her up and over to a post. I told her to hold onto the post. I was spitting blood.

I walked to Officer Hall and said, "I want a warrant for his arrest." Hall said I'd have to go swear it out. I then went back to the beaten lady. The police helped her into the backseat of the cruiser. She said to me, "They were calling me names in the grocery store." Officer Conley then asked me my name and address. I answered his questions and again said, "I want a warrant for his arrest." He said I'd probably have to wait until Monday. The other officer (Hall) told me where I could get a warrant.

Officer Hall called an ambulance. The lady said, "call Mr. Nunnery, Administrator on-call at Highlands Regional." The officer asked her if she was O.K. She answered, "my head hurts and I don't even know if I'm talking straight." A female medic arrived and tended to her. Then they drove off. I got in my car and left.

E. Keith Conn
5-1-81 9:50 p.m.

Witness:

Incidents at Highlands Regional Medical Center

Highlands Regional Medical Center is a 137 bed facility with 459 employees, 290 of whom are members of the National Union of Hospital and Health Care Employees (1199).

On March 23, 1981, at midnight, 290 Dietary, Maintenance and Housekeeping personnel, Technicians and L.P.N.'s struck the hospital. All ambulatory patients were discharged and the 2nd. floor was vacated prior to the strike. The 3rd. and 4th. floors and the Emergency Room were kept in operation. Those persons not on strike, i.e. office workers, management personnel and other non-union personnel were provided quarters during the early part of the strike on the vacant 2nd. floor.

Just prior to walkout time, unknown persons moved from room to room cutting telephone cords. This occurred even though we had guards on every floor. Equipment was taken by departing strikers (i.e. electric thermometers) and sterile medical supplies were contaminated.

Pickets stopped our ambulances to check for "scabs" and told visitors and potential patients we were closed.

They attempted to frighten non-striking employees in many ways. They jumped in front of and onto vehicles passing through the picket line and fell to the pavement screaming.

Persons crossing the picket lines could expect nails in their tires and rocks, bottles and eggs thrown at them.

Bomb threats occurred.

Some of our employees had their homes shot into and groups of pickets followed employees' cars from work to their homes.

Employees received threatening phone calls at all hours.

Pickets physically beat a female personnel assistant.

Rocks and bottles were thrown at our buildings and firecrackers were set off day and night.

A major problem was with the police protection. Police were often unable to respond to our calls and according to Ky. State law, the crime had to be committed "in the presence of the law officer" for an arrest to be made. The warrant procedure for victims required up to 4 hours for completion and arrests on the warrants were delayed as much as two weeks. Police also misinterpreted injunction orders and allowed additional picketers as captain and messengers. Eventually, the judge had to call the police commander to tell him to enforce his orders correctly.

The police were frequently slow to respond. They tired of our calls and a warrant was issued for one of the outside security guards for making a "false report" regarding the number of picketers on the line. Actually, the report was factual, but during the time it took police to arrive, many of the picketers had gone. Some of the difficulties with the police may have stemmed from the fact that they alledgedly had relatives walking the picket line.

Mason Sexton

Mason Sexton
Director of Security

STATEMENT OF SAMUEL EISENBERG
MANAGER-SECRETARY OF PLASTIC, MOULDERS' & NOVELTY WORKERS' UNION, LOCAL 132 INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO

I thank the Committeee for allowing me the opportunity to submit this statement in opposition to S. 613, and particularly to rebut the statements of Reed Larson, President of the National Right To Work Committee, and of Mike Matthews, President of Electro-Harmonix, which were received by this Committee on December 10, 1981. I am particularly pleased to have been given this opportunity to respond before this honorable forum, for we were denied such an opportunity by WNBC TV, which aired a one-sided and distorted report, and then refused to permit us to present the real facts and set the record straight.

I did not participate in the strike at Electro-Harmonix, but I have knowledge of some of the facts, and I have reviewed the matter in detail with the Union agents who were involved. Based upon their reports and my own knowledge of the facts, it is clear, as I will demonstrate, that the statements of Mr. Larson and Mr. Matthews, with regard to the labor dispute at Electro-Harmonix, consist largely of fabrications, constructed to suit their ideological predisposition against labor unions. The incidents which occurred at Electro-Harmonix in August 1981 resulted from the provocations and illegal activities of Mr. Matthews and his agents. Had they not violated the rights of their employees under the National Labor Relations Act to choose (or not to choose) a bargaining representative, there would have been no dispute and no strike, and the workers would have chosen this Union to represent them in collective bargaining with Electro-Harmonix. Moreover, the Electro-Harmonix strike stands as an example of how police authorities are totally responsive to the complaints of employers, in policing or over-policing strike and picket line situations.

A few years ago, this Union made an attempt to organize the employees of Electro-Harmonix. Contrary to the statement of Mr. Matthews, these attempts at organization did not include slapping and kicking of workers or any other abusive behavior. There was no picketing at that time. All that happened was that Union agents attempted to convince a substantial number of employees to support the Union and when that failed, these efforts were abandoned at that time. Common sense dictates that one does not convince others to join an organization with threats of violence. I specifically deny Mr. Matthews' allegation that I engaged in a conversation with him at that time. This did not happen.

In late July 1981, as a result of these earlier organization attempts, employees of Electro-Harmonix contacted an official of this Union and advised him that they were interested in joining the Union and having the Union represent them. As a result, Union organizers visited the area of the Electro-Harmonix factory during the week beginning August 3, 1981. Union agents, varying in number between four and six, spoke with employees outside the plant. After August 3, they also distributed Union literature and authorization cards. Contrary to the statement of Mr. Matthews, employees were not threatened in any way.

Early in the week, employees were responsive to the Union agents and some of them signed authorization cards of their own free will. As the week progressed, however, it became increasingly more difficult to even speak to the employees. Union agents were informed by employees that from the inception of the Union campaign on August 3, Mr. Matthews and his supervisors engaged in a systematic and pervasive campaign of unlawful activities to interfere with, restrain and coerce the employees in their exercise of rights under the National Labor Relations Act. The Union thereupon filed an unfair labor practice charge with the Regional Office of the NLRB, in Case No. 2-CA-18283. A copy of the Complaint issued by the Regional Office of the National Labor Relations Board upon the Union's Charge is attached hereto as Exhibit "A". As indicated in the Complaint, beginning on August 3, 1981, the day the Union began its campaign, Electro-Harmonix promised and granted wage increases to induce employees to reject the Union, and threatened employees with reprisals, including discharge, if they joined or supported the Union. It is important to note that the witnesses interviewed by the NLRB in support of this charge were employees of Electro-Harmonix, not Union officials. (I should say former employees of Electro-Harmonix, since these witnesses have all since been terminated by the firm, as I will explain.)*

By Friday, August 7, 1981, it was clear that Mr. Matthews' illegal practices had succeeded in defeating the organizing campaign. A decision was then made to picket the Electro-Harmonix factory to protest these unfair labor practices. This decision was prompted, in large part, by the Union's desire to demonstrate its committment to those employees who had supported the Union in the face of the illegal activities engaged in by Mr. Matthews and his supervisor.

The picketing began on the morning of Monday, August 10, 1981. Contrary to the statement of Mr. Matthews, a limited number of Union agents participated in the picketing along with approximately 10 to 15 employees of Electro-Harmonix, who actively engaged in picketing. Many other emplyees indicated that they supported the Union, but that they did not want to be seen picketing by Mr. Matthews or his supervisors, in view of the earlier threats of retaliation against Union supporters.

Problems began almost immediately. As picketers picketed peacefully, Mr. Matthews stayed out on the street in the area of the picket line, and ordered striking employees to go to work. At one point, a pushing match ensued after Mr. Matthews physically grabbed one of the workers and directed her to go upstairs. I imagine that this is the altercation that Mr. Matthews refers to in his statement. Contrary to the statements of Mr. Matthews and Mr. Larson, "vicious attack by eight Union agents," which Mr. Matthews was singlehandedly able to fend off without injury, according to them, did not, in fact, occur. What happened was that Mr. Matthews engaged in a pushing match with a Union agent who attempted to assist the worker whom Mr. Matthews had grabbed and directed to go inside to work. Mr. Matthews' persistently overbearing and belligerent manner resulted in the police directing him away from the area when they arrived on the scene that morning.

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* The Committee should note that while this NLRB Complaint issued on September 17, 1981, the hearing on the matter will not take place until July 28, 1982! (See Exhibit B, the Order Scheduling Hearing attached hereto.) I am informed that this is due to the enormous caseload which consists mostly of employer unfair labor practices.

Approximately four to six policemen arrived on the scene by about 8:30 a.m. on August 10, 1981. From August 11 through August 25, (tha last day of the picketing) no less than 15 policemen were stationed outside of the factory at all times, keeping the pickets behind the police barracades. Other policemen patrolled the area and nearby subway stations and intersections. Indeed, on some occasions the policemen outnumbered the picketers. Police remained stationed in front of the factory for weeks after the picketing ended. Contrary to the statements of Mr. Larson and Mr. Matthews, who describe "flimsy police barracades" and "police in a state of suspended animation", a heavy, visible and active police presence was maintained at all times. The television films that Mr. Matthews speaks of show this conclusively. In fact, the large number of police on the scene served to intimidate and frighten away striking employees who would otherwise have engaged in peaceful picketing.

I state unequivocally that during the strike Union agents did not threaten individuals with nor possess weapons such as knives, sticks or bottles described by Mr. Matthews. Rather, Union agents have told me that some employees of Electro-Harmonix displayed knives, pipes and other weapons associated with the practice of karate.*

Employees of the company who participated in the strike have informed me that some of the so-called "employees" who threatened strikers had never before been seen working there, and seemed to have been brought in for the express purpose of intimidation.

Throughout the strike, Union agents and striking employees attempted (without violence and abuse) to convince working employees that they had a right to support the Union, and that it was in their interest to do so. Such discussions were often abruptly ended by pushing and shoving initiated by other so-called "employees" who did not believe these statements should be made.

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* A photograph, attached hereto as "Exhibit C", clearly shows an individual, identified to Union agents as employee James Grecco, who was not striking, but acting as an Employer agent in guarding the entrance to the plant with a lead pipe in his left hand, and his right hand wrapped with wire.

Striking employees received strike benefits as is the Union's policy. No employees were offered money as a bribe to induce them to engage in any Union activities.

I have studied the WNBC-TV news film to which Mr. Matthews refers. The film shows an egg throwing incident involving Union agents and other individuals. I am informed by the Union agents that the incident was started by persons other than strikers, who were attempting to disrupt the picket line. Although these individuals were clearly identifiable on the film, WNBC made no effort to do so, being content to attribute the incident to "union hoodlums." This type of violence which occurred on August 19, 1981 was aired by NBC for three consecutive days, although the violence did not continue because Union agents were instructed not to retaliate. The NBC film also shows picketers assembled behind barracades while a phalanx of uniformed police escorted workers into the building. Interviews with employees on the picket line who complained of harassment by Mr. Matthews were omitted from the final aired version.

During the strike, I declined an opportunity to appear with Mr. Matthews on the WNBC television news show. I made this decision for two reasons. First, since I was not on the picket line and away from my office on other business that day, I was not familiar with the facts and needed some time to become acquainted with the situation. Second , having heard of the earlier news report, which indicated the newscasters biased and close-minded viewpoint, I did not wish to appear at this "kangeroo court." I subsequently requested an opportunity to reply, but this was denied to me by WNBC.

Throughout the course of the strike, seven Union agents were arrested by the police. One agent was charged with assault; this charge has been adjourned in contemplation of dismissal, the

District Attorney and the Court being of the opinion that further proceedings are not warranted. The other six agents have been charged with violations such as harassment and disorderly conduct. These violations essentially allege that the agents engaged in unlawful acts which do not constitute even misdemeanor crimes and did not result in injury. Significantly, Leo Suarez, the only Union agent named by Mr. Matthews, was not cited by the police for anything. Union agents have complained that while they were arrested, the police would not even investigate allegations brought against others, including allegations of concealed weapons which were "flashed" to the picketers. One of the harassment charges was based on a Union agent's having thrown a paper bag containing a sandwich at an employee. The Union agent had caught the bag when the employee threw it at her! The employee, however, was not arrested.

On August 28, 1981, the Regional Office of the NLRB issued a Complaint against the Union, alleging restraint and coercion in violation of the National Labor Relations Act, based upon a charge filed by Electro-Harmonix. Significantly, during the pendency of the strike, the NLRB had rejected a request by the company based upon the charge, than an injunction be sought in Federal Court to end the picketing.

Although I have no doubt that the charge was without merit, and that the Union would have prevailed in these proceedings, upon the advice of our attorneys I entered into a settlement of these charges in order to avoid expensive, protracted litigation. Upon our insistence, the NLRB agreed to include a provision in the settlement stipulation which states that the Union's entering into the settlement is not an admisssion that the law was violated.

On August 25, 1981, the Union ceased picketing and ended the strike. We did so because it was apparent that the strike had not succeeded in overcoming the Employer's unlawful practices. What had occurred instead was that, through the provocation at the picket line and manipulation of the police and the media, the Employer had succeeded in obsfucating and distracting attention from its own unlawful acts which prompted the picketing. However, as subsequent events have shown the employees of Electro-Harmonix are helpless in attempting to deal with their Employer, and therefore this Union will not abandon them.

On August 26, 1981, the day after the picketing ended, approximately nine of the employees who had taken an active role in the strike appeared at work and requested reinstatement to their jobs. These employees were denied reinstatement at that time, and have not been reinstated since. Mr. Matthews could not have any evidence that these employees engaged in any misconduct warranting their discharge, since he has already gone on record as saying that he saw no employees engage in picketing! This matter is currently under investigation by the NLRB (see NLRB charge attached hereto as Exhibit "D").

It should also be noted that a few weeks after the strike in early September, 1981, another group of about five employees who had worked at Electro-Harmonix visited the Union office asking for job refferals. These employees had not picketed, but had honored the picket line. They reported that they were forced to quit Electro-Harmonix because they were being paid only $25.00 per week, with Mr. Matthews having stated that he would "owe" them the rest of their wages. Although Union agents offered to assist these employees in pursuing their wage claims with the Department of Labor, the employees declined to do so, stating they feared harassment by the company.

In summary, contrary to the statements of Mr. Larson and Mr. Matthews, the Electro-Harmonix strike stands as evidence for three points. First, despite the labor laws and the efforts of the NLRB, employer threats, coercion and intimidation can destroy a successful Union campaign. Second, company agents can provoke incidents at a peaceful picket line (especially in congested urban areas) which incidents will be attributed to "union goons." Third, and most significantly for the purposes of this Committee, local police authorities will respond (and over-respond) to requests for intervention by local employer/business persons, and did so in this situation, contrary to the assertions of Mr. Matthews and Mr.

Larson. This police presence, manipulated by the Employer, serves to dissuade employees from exercising their legal right to strike, and helps to create an atmosphere of fear and intimidation in which the company agents (such as the man with the lead pipe whose photograph is attached) can wreak havoc and disrupt the Union's efforts to peacefully protest unlawful employer practices and to protect the rights of employees under the National Labor Relations Act to select a Union to represent them.

ATTACHMENTS: EXHIBITS A, B, C, AND D.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

ELECTRO-HARMONIX, INC.

and — Case No. 2-CA-18283

PLASTIC, MOULDERS, METAL & NOVELTY
WORKERS UNION, LOCAL 132, INTERNATIONAL
LADIES' GARMENT WORKERS' UNION, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Plastic, Moulders, Metal & Novelty Workers Union, Local 132, International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, that Electro-Harmonix, Inc., herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the undersigned, pursuant to Section 10(b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on August 19, 1981, and served by certified mail upon Respondent on August 20, 1981.

2. (a) At all times material herein, Respondent, a New York corporation, with its principal office and place of business at 27 West 23rd Street, New York, New York, herein called its facility, has been engaged in the manufacture and distribution of electronic music accessories.

(b) Annually, Respondent, in the course and conduct of its business operations described above in subparagraph (a), purchases and receives at its facility goods and supplies valued in excess of $50,000 directly from enterprises located outside the State of New York.

3. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. At all times material herein, the following named persons have occupied the positions set forth opposite their respective names, and are now, and

EXHIBIT A

have been at all times material herein, supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent, acting on its behalf:

Michael Matthews	president
Carren Cartagena	production supervisor

6. On or about August 3, 1981, the Union commenced an organizational campaign among certain of Respondent's employees.

7. On or about August 3, 1981, Respondent, by Matthews, at its facility:

(a) promised employees increased wages, holidays and other unspecified improvements in their terms and conditions of employment if they rejected the Union as their collective-bargaining representative;

(b) threatened employees with stricter terms and conditions of employment if they selected the Union as their collective-bargaining representative; and

(c) warned and advised employees not to sign membership or authorization cards on behalf of the Union.

8. On or about August 3, 1981, Respondent, by Cartageno, at its facility:

(a) promised employees unspecified wage increases if said employees rejected the Union as their collective-bargaining representative;

(b) threatened employees with unspecified reprisals if said employees selected the Union as their collective-bargaining representative;

(c) threatened employees with discharge if said employees signed membership or authorization cards on behalf of the Union; and

(d) advised employees that they could not sign membership or authorization cards on behalf of the Union.

9. On or about August 7, 1981, Respondent, by Matthews, granted a retroactive wage increase to certain of its employees.

10. Respondent engaged in the conduct described above in paragraph 9 because its employees joined, supported and assisted the Union, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

11. By the acts and conduct described above in paragraphs 7 through 10, Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

12. By the acts and conduct described above in paragraphs 9 and 10, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

13. The acts and conduct of Respondent, described above in paragraphs 7 through 12, occurring in connection with the operations of Respondent, described above in paragraphs 2 and 3, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing at a time and place to be designated, and on consecutive days thereafter, a hearing will be conducted before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof, and that, unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board. You are also notified that pursuant to said Rules and Regulations, Respondent shall serve a copy of the answer on each of the other parties.

Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

Dated at New York, New York, this 17th day of September, 1981.

Daniel Silverman
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

ELECTRO-HARMONIX, INC.

and Case No. 2-CA-18283

PLASTIC, MOULDERS, METAL & NOVELTY
WORKERS UNION, LOCAL 132, INTERNATIONAL
LADIES' GARMENT WORKERS' UNION, AFL-CIO

ORDER SCHEDULING HEARING

PLEASE TAKE NOTICE that the hearing in the above-captioned case will commence at 10 a.m. on July 28, 1982, and on consecutive days thereafter until completed, at 26 Federal Plaza, Room 3614, New York, New York.

Dated at New York, New York, this 23rd day of October, 1981.

Daniel Silverman

Daniel Silverman
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

EXHIBIT B

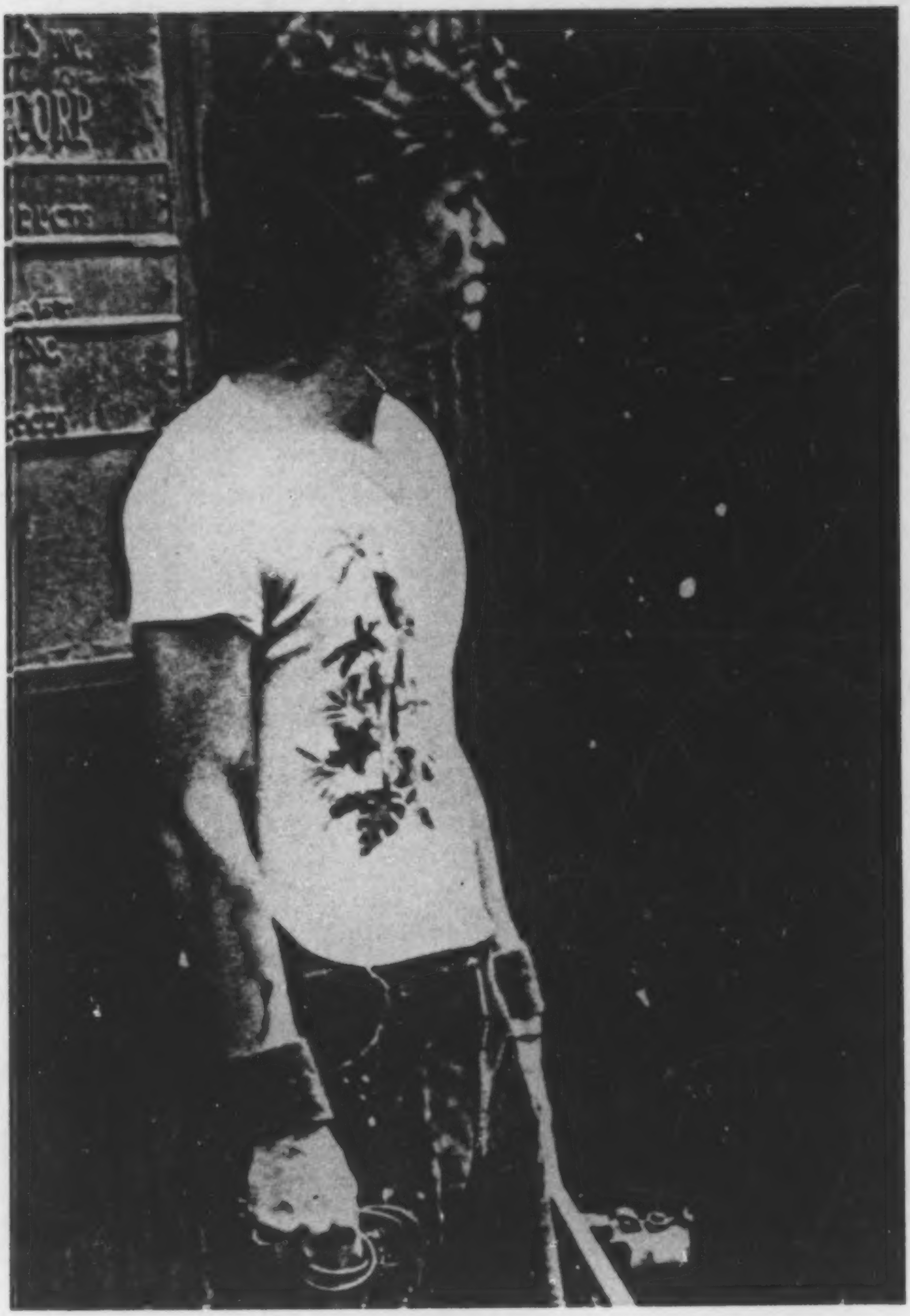

EXHIBIT C

FORM NLRB-501
(12-77)

FORM EXEMPT UNDER
44 U.S.C. 3512

REGION 2
N.L.R.B.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

'81 DEC 18 PM 4:17

NEW YORK, NEW YORK

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 2-CA-18488

Date Filed 12/18/81

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: ELECTRO-HARMONIX, INC.

b. Number of Workers Employed: approx. 80

c. Address of Establishment (Street and number, city, State, and ZIP code): 27 West 23rd Street
New York, New York 10010

d. Employer Representative to Contact: Michael Matthews

e. Phone No.: 742-1770

f. Type of Establishment (Factory, mine, wholesaler, etc.): factory

g. Identify Principal Product or Service: electronic components

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 26, 1981, the above named Employer failed and refused to rehire its employees, Carmerino Suarez, Dina Arana, Nancy Lopez, Rosael Echevarria, Alexandrina Suarez, Rosanno Delgado, Rosalina Calcador, George Breland, and Maria Figueroa because said employees engaged in activities on behalf of Plastic, Mounders', and Novelty Workers' Union, Local 132, I.L.G.W.U.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): PLASTIC, MOULDERS', and NOVELTY WORKERS' UNION, Local 132, I.L.G.W.U.

4a. Address (Street and number, city, State, and ZIP code): 275 Seventh Avenue
New York, New York 10001

4b. Telephone No.: AL 5-2530

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Samuel Eisenberg (Signature of representative or person filing charge)

Manager-Secretary (Title, if any)

Samuel Eisenberg

Address 275 Seventh Avenue
New York, New York 10001

AL 5-2530 (Telephone number)

December 18, 1981 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

cc: Stanley Goodman, Esq.
Chaikin & Chaikin - 450 Seventh Avenue, N.Y., N.Y.

EXHIBIT D

PREPARED STATEMENT OF SAM J. ERVIN, JR.

STATEMENT ON SENATE 613

AMENDMENT TO THE HOBBS ANTI-EXTORTION ACT

Mr. Chairman, I am taking this opportunity to present to you my views on an extremely important piece of legislation now pending before your Subcommittee. The bill in question, S. 613, introduced by Senators Thurmond, Hatch, and East on March 3, 1981, would amend 18 U.S.C. § 1951, commonly known as the Hobbs Act, and would, in my opinion, eliminate a glaring imbalance that presently exists in the scheme of federal criminal law. I am writing in the hope that my views may prove helpful to you and the other members of the Subcommittee in your deliberations on this important issue.

The need for S. 613 becomes crystal clear if we briefly consider the history of the legislation leading up to the Hobbs Act. In 1934, Congress passed the Anti-Racketeering Act. That law forbade violent and coercive conduct in interstate commerce. The 1934 law, however, contained a statutory exemption from prosecution applicable to a bona fide employee who used force to obtain payment of wages from a bona fide employer. In 1942, in the case of U.S. v Local 807, Teamsters, 315 U.S. 521, the Supreme Court of the United States interpreted that statutory exemption in an astoundingly overbroad manner, holding that violent conduct by a union member could not constitute the basis for a federal indictment if the union member was arguably attempting to obtain higher wages by such conduct.

Shocked by the "end justifies the means" test enunciated by the Supreme Court in Local 807, Congress, in 1946, sought to rectify the situation by passing the Hobbs Act. That law, on its face, prohibits all violence and extortion that obstructs interstate commerce. By omitting from the text of the Hobbs Act any statutory exemptions, Congress made clear its intention to have a law of universal application, and to prevent the courts from carving out the sort of sweeping exceptions typified by Local 807.

Until 1973, anyone familiar with the language and history of the Hobbs Act would have reasonably concluded that it was a federal criminal offense for union members to obstruct interstate commerce by committing acts of violence while pursuing union objectives. However, in that year, in Enmons v U.S., 410 U.S. 396, the Supreme Court of the United States, in a 5-4 decision, held that the Hobbs Act was not violated where union members used violence and extortion to achieve legitimate union objectives.

In my opinion, the Enmons decision is a classic example of bad law. No justification for the position taken by the Supreme Court can be found in the language of the Hobbs Act, in its legislative history, or in the events that led to its enactment. Other federal statutes do not permit criminal conduct to go unpunished based upon the criminal's motivation or identity. Violence and destruction as incidents of labor-management disputes are sadly familiar in America today, and the senseless emasculation of the Hobbs Act by the Enmons decision destroyed a powerful tool for combating such excess.

S. 613 would simply and succinctly rectify the gross imbalance in the application of the Hobbs Act that has resulted from the Enmons decision. The language of the bill makes clear that federal jurisdiction extends to criminal acts that "take place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective."

As we are both aware, organized labor has voiced loud objection to S. 613. I would like, at this point, to address briefly that aspect of the situation confronting your Subcommittee. The principal objections raised by organized labor are three: (1) that the objective of S. 613 is to make minor picket-line altercations federal crimes; (2) that S. 613 is unnecessary since state and local laws are adequate to deal with labor violence; and (3) that S. 613 is unfair in that it would penalize the employee and not the employer. All three of these objections lack merit.

(1) The argument that the purpose of the pending bill is to make the Hobbs Act applicable to minor scuffles collapses when one considers that the bill is intended to undo the harm wrought by the Enmons decision, and that Enmons did not involve a minor scuffle; it involved "firing high-powered rifles at three company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company." 410 U.S. at 398. The bill is designed to make emphatically clear that federal criminal jurisdiction extends to that sort of major criminal act.

(2) The "state and local laws are adequate" argument yields to a simple common sense test. Local authorities frequently lack the resources necessary to deal effectively with major acts of violence, and, furthermore, are often unwilling to act when to do so would force them to take a position against one or more competing local interests. An effective Hobbs Act is necessary to insure a reliable mechanism for dealing with large-scale industrial violence.

(3) The argument that the bill would penalize one side and not the other in a labor-management dispute is simply not true. Its provisions apply to any person who obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, extortion, or serious violence to person or property.

For the reasons set forth above, I respectfully urge you and the members of your Subcommittee to act expeditiously with regard to S. 613, a piece of legislation that this nation urgently needs.

Sam J. Ervin, Jr.

STATEMENT OF DONALD T. FRITZ OF J.T. FRITZ AND SONS IN LUTHERVILLE, MARYLAND

My name is Donald Fritz, and before I begin my story, I'd like to say that I appreciate the chance to come here today to share my experience with the members of this committee. I just hope that after these hearings end the necessary changes in the law will be made -- so that other Americans do not have to go through what my employees and I went through at the hands of union militants.

For me, the story begins in 1951, when upon discharge from the Navy, I joined my father in the business of erecting fences.

In 1954, when my father died, I took over the company, J.T. Fritz and Sons of Lutherville, Maryland. Early on, as head of a nonunion business, I was confronted by numerous incidents of intimidation and harassment from elements of Local 16 of the Ironworkers Union in Baltimore -- mostly it involved threats of what would happen if I continued to operate without using unionized ironworkers. Their message, expressed in the most foul and vile language, was clear -- either I hire from Local 16 or get a steel H-beam wrapped around my neck.

When the threats included promises to tear up a job we were working on -- the state and local police responded by not responding -- never -- not once were any police sent to at least keep an eye on the situation -- I know because many a night my brother and I used to stand guard with loaded rifles just to make sure the militants from Local 16 were not able to make good on their threats.

Finally, even though state and local authorities refused to help us, things began to settle down. I guess the people from Local 16 realized we were not going to be intimidated and we intended to protect our property and to run our business. Still, in looking back, the whole thing represented a pretty sad state of affairs. There is something very wrong when a businessman in the 20th Century -- in what is supposed to be the greatest democracy on earth -- has to guard his property with a gun because he can't look to the law for protection. Things are out of kilter when the representatives of a union can, without fear of punishment, use the most violent and threatening language as a means to intimidate people into accepting their demands.

However, I'm convinced that by standing up to the Ironworkers Union in those early years, we bought ourselves a period of relative peace. But even with that peace, always in the back of my mind was a sense of dread, a fear the intimidation business would begin anew -- and that the next time the threats would be followed by some real violence.

In the summer of 1974, the worst of my fears were realized when the Ironworkers Union began a drive in the Baltimore area to organize the industrial and commercial chain-link fence industry.

The first victims were our two major competitors. Both had refused to sign contracts with Local 16. Rather than just hurl threats, goons from 16 vandalized equipment, threw rocks at the cars of company officials, and beat up a number of workers. Immediately after one bloody attack, an official of the company under siege (Anchor Post) asked a business agent from Local 16 at the scene if all the violence was necessary. The reply: and I quote from court testimony: "Well you should have signed a contract with us; this wouldn't have happened."

I repeat this statement simply to illustrate the mentality of the type of people we were dealing with. And deal with them, we did. Our turn came several months later -- in September -- when two carloads of ironworkers from Local 16 descended upon three of our workers erecting a fence at a site on Pennington Avenue in Baltimore city.

Carrying pipes and hammers, the ironworkers formed a semicircle around the Fritz employees and laid the weapons very conspicuously on the ground. At that point, the leader of the ironworkers, one Bill Shaffer -- a business agent -- went nose-to-nose with our crew leader and said, "I'm Shaffer from 16; stop working now and have your boss call me."

Frightened, my men left the job and refused to return without me accompanying them -- This I did the following day -- and the day after that. It was on the second day that I got a personal taste of the lengths to which the militants of 16 would go to intimidate us from doing the job.

Around lunchtime, one of the militants, who was in the gang that had accosted my men two days earlier, appeared on the scene and came storming at me in an apparent rage, grabbed me by the throat, and started screaming, "My union shot five people and I'm going to kill you and bust your head in." My attacker, a large, powerful man later identified as Kenneth Deetz, threw me to the ground, whereupon he strangled and kicked me. Fortunately, I finally managed to escape and flee to my car.

Although the local police responded and took Deetz into custody, he was released several days later with no verdict. The presiding judge remarked of the incident -- quote "Oh, just another labor dispute case." To add insult to injury, the day after I was beaten, the job site and our company warehouse sustained considerable vandalism.

I'd had enough. Being a feisty fellow myself, and deciding that this sort of conduct was not what I served two tours of active duty in the Navy to defend, I sued.

The end result, after four years and a grueling, emotionally draining trial, was a $110,000 federal jury judgement against Local 16 of the Ironworkers Union. But all the money in the world will never make up for all the pain and trauma that I, my workers, and my family had to endure just to earn a living.

No amount of money will ever answer for me the question of why such conditions have to exist in a country we tell everyone is the freest in the world. When, I would like to know, are the people who make the laws going to make laws that will protect people like me and my employees from the threatening and violent tactics of union radicals? Just what is it that Congress is waiting for? Are they waiting for innocent people to be killed before enacting legislation that will make planned and calculated violence on a construction site a federal crime?

STATEMENT BY ANITA DI LUZIO OF GREENFIELD, MASSACHUSETTS

I thank you for the opportunity to submit this testimony in support of S. 613. I hope my statement will help other workers, like myself, who are the victims of labor union violence.

My story begins on November 1, 1979, the day I returned to work at Wesco Electrical Company in Greenfield, Massachusetts. Previously, I had been an employee at Wesco for 2-1/2 years. And now I wanted to leave my current employer and return to Wesco.

To go back, however, I had to cross the picket line of the United Electrical, Radio and Machine Workers of America (UE). A number of other people crossed the picket line, too. At the time, I had no idea of the violence the pickets were capable of. They soon taught me. I was singled out by the picketers as someone to make an example of.

The first day after work about 40 strikers came to my home, shouting threats and using foul language. Unfortunately, this was only the beginning of what my family and me were put through by the union.

Each day a truck would park out on the street directly in front of my house. I recognized two of the men who came in the truck. Both were union members. They would stand out at the curb talking and drinking. I guess they were trying to frighten me. Needless to say, it worked. I never went outside while they were parked in front of my house.

On January 10, 1980, I was attacked in my car while trying to maneuver through the picket line. The rear car window was shattered.

I then drove to the local police station to report the incident. The officer behind the front desk told me to go away and come back later. They were all busy. But I stayed until someone helped me.

My friend, Shirley, brought me home from the police station and we found my house a wreck. Windows were broken; holes were punched in the door; rocks, bottles and broken glass were laying everywhere. But when my daughter came around from behind the house crying -- frightened to death -- I realized the worst thing that happened wasn't vandalism.

She and a friend had been sitting on the front steps waiting for me when the picketers arrived, shouting, screaming, and throwing rocks, sticks, and bottles at her. One rock hit her. Shirley called the police for me. But I had to call them two more times before a patrol car finally pulled up.

Later, as a result of my complaint for smashing my rear car window, I took two union members to court. My witnesses to the picket-line incident, the police, didn't bother to show up in court. I don't know if the officers were afraid of the union or if they simply didn't feel my case was worth taking the trouble to testify.

Needless to say, these were bad times for my family. People came from other towns to join the strikers. They set fires, broke windows, threw paint, and made crank phone calls. Both my girls were afraid to answer the phone. My daughter Paula's car was smashed while parked in our own driveway. And she was warned not to turn her back when walking up town. I was called names when walking up town. My fifteen-year-old daughter, Cathy, was called a slut. And after I filed suit against the union in July, 1980, I was threatened by phone. The caller said they were going to burn us out.

No matter what the strikers did, they were protected by their powerful union. They were free to make my town a battle zone because no one had the power to stop them. I hope the members at this subcommittee do whatever is necessary to make everyone in this country equal under the law, to keep what happened to me and my family from happening to someone else.

Anita Di Luzio

STATEMENT OF MIKE MATTHEWS, PRESIDENT OF ELECTRO-HARMONIX, NEW YORK, NEW YORK

I am pleased to submit this written testimony to the record, Mr. Chairman. However, I wish the time constraints imposed on these hearings allowed me to speak before the subcommittee face-to-face.

In my view, one of the most important functions of government is to uphold the law and insure the public safety. My employees at Electro-Harmonix and I know from painful, personal experience how terrifying life can be when government fails in its responsibility to protect its citizens from violent hooligans.

That's why I have traveled from New York City to attend these hearings today. I want to contribute in every way possible to the passage of S. 613. It is vitally important that this legislation gets the attention it deserves.

Three years ago, the ILGWU launched an organization drive at Electro-Harmonix. At that time, there were some threats made to members of the company and two of our members were slapped and kicked. Workers quickly rejected this attempt to unionize Electro-Harmonix. Before they withdrew, a man identifying himself (and I absolutely believe and know in my heart that this was the man) as Sam Isenberg, President of Local 132 of the ILGWU, called me up and told me, "Mike, why don't you let me show you how we can work this out. It won't cost you a dime. In fact, I'll show you how you can save money on this...." I terminated this discussion and mentioned what he had said to our workers. Around this time, the union withdrew their organization attempt.

On August 3, 1981, at approximately 12 noon, the ILGWU began another organization drive. Two of the organizers involved had been involved in the previous organization attempt. At this time, they were passing out cards to our people on the street and behaving in what seemed at the time to be a legal and legitimate manner. During that week, some members of Electro-Harmonix were threatened and told that if they didn't join, "when they [the union] got in, they were going out."

After calling my lawyer and being refreshed on the labor laws, I went out and talked to my production people. I knew that the overwhelming majority did not want to join the union.

On Monday, August 10, I came to work at 8:00 AM (we officially begin at 8:30 AM) and upon arriving saw some one hundred people milling around the entrance to the building. These individuals were not members of Electro-Harmonix. I quickly came in the front door to catcalls and curses, went upstairs and called my attorney. I then called the police as per his instructions. After this, at approximately 8:15 AM, I went downstairs. Over the next ten minutes, this large crowd split into two groups. Half milled in force about the front entrance and half surrounded arriving workers trying to get into the building to report for work. The union organizers told me I had no business downstairs and to get back upstairs. At approximately 8:25 AM, eight people jumped me -- two from behind pulling my hair, one punching me from the front, and the others attacking from the sides. One of these individuals was Leo Suarez, the person in charge of organizing on the street. I still stayed at the entrance as I fended off my attackers and noticed many of our people were being pushed, surrounded, and yelled at. One of the first people to actually make it into the building, Nilda, had her hair pulled violently.

At this time, the police arrived upon the scene and told me to get upstairs. I suggested that I stay and tell the workers they had the right to come in, but the police wanted me upstairs until they could set up barricades. During the day, members were beaten with sticks, and almost everyone who made it into the building was beaten or in some way restrained. Workers (who have given subsequent testimony) were surrounded and physically forced to sign cards and some members were paid sums of money on the spot to sign (testimony regarding the latter also given). Our lawyer immediately contacted the National Labor Relations Board and informed them of the violent nature of the union's actions, and, in fact, telephoned them on a daily basis. It was not until Thursday, August 13 at 3:00 PM, that a member of the board came to take testimony. Approximately thirty members of Electro-Harmonix wanted to testify to the National Labor Relations Board, but over the next three days, they took testimony from only about nine people and said there was no reason to take more as this was enough to file a complaint, although I protested this.

During the entire period between August 10 and August 19, there was daily and continuous violence to members coming and going to work. People were attacked and struck with sticks, one member had his eye severely injured, workers were pelted with eggs, one was attacked by six individuals and a bottle was broken over his head, another was jumped in the subway by four men and four women, employees were attacked and punched from behind -- to mention just a few of the incidents.

At 10:00 AM on Monday, August 10, I called NBC News. They informed me that what was occurring sounded like news, and that they might come down, but could not tell me if they would for sure, or when.

On the morning of Wednesday, August 12, workers informed me that they had been threatened with knives and told that if they did not leave work at 1:00 PM, they would "get it" at 5:00 PM when leaving to go home.

At 9:30 AM on Wednesday morning, Jim Van Sickle (212-664-2330) of NBC News called. He said he had just filmed, with hidden cameras, some of the activities on the street and would like to interview some people upstairs in the factory. Upon arriving, he asked me to go to another part of the factory and that he wanted to speak to some of the workers he would choose at random.

We closed early that day. Approximately seventy-five members of Electro-Harmonix wanted to march to the Mayor's office, but under the advice of an investigator for the N.Y.C. Police Dept., we took a delegation of only twelve. We met with Herb Rickman, assistant to the Mayor, and he informed us that there was little they could do since the police were already doing all they legally could. All Mr. Rickman could suggest was that I speak to the District Attorney. I did so.

Watching the news on Channel 4 at 6:00 and 11:00 that night, I was relieved to see that NBC had captured the real story of what was transpiring. NBC came down again on Thursday and followed up their story with interviews in the street and in the factory. They came again on Friday. The story was aired on Wednesday at 6 and 11 PM, and on Friday at 6 PM. On Thursday, I was asked to answer questions by the NBC News Staff on the NBC Live At 5 television show.

Sam Isenberg, President of Local 132 of the ILGWU, was also asked to appear on Live At 5, but he refused to do so.

On Tuesday afternoon, August 25, the union suddenly left and hasn't returned thus far.

My attorney informed me that the union's attorney suggested that we drop our charges against them and they would drop their charges against us. I don't intend to do this.

I hope that you take the opportunity to subpoena and review all edited and unedited films taken by NBC at this time as they are poignant and accurate testimony to the activities prevalent throughout the city and nation. Our fragmented labor laws are abused by these so-called unions who resort to "legalized violence" and leave the police and employees in a state of suspended animation.

I personally would be happy to testify on any of the above as an American citizen, and I know that the majority of the workers at Electro-Harmonix would do the same. Many other testimonies can be subpoenaed from District Attorney Epstein's office and the National Labor Review Board.

A Statement

Submitted to the Criminal Law Subcommittee
of the U.S. Senate in Support of
Senate Bill 613, by John B. Parrish
Distinguished Professor of American
Business and Society, Northeast Louisiana
University, Monroe, Louisiana

This statement is in support of Senate Bill 613.

There are many reasons to support this bill. My statement will focus on the high economic and social costs of violence committed by union officials, the only group in the nation exempted from prosecution for committing violent acts, under the 1973 Supreme Court decision in the Emmons Case.

First, an important cause of higher costs in American industry arises from restrictive work rule practices imposed by union bargaining power. This has been closely associated with violence when employers have tried to resist wasteful and uneconomic work rules. The stagnation of productivity in some industries is a major national problem. Violence at the work place has been an unnecessary contributing factor.

Second, violence, and the threat of violence, raises costs when production is interrupted by strikes accompanied by violence, intimidation, threats against both employers and workers who do not agree with union policies. American consumers pay a very high price for this violence.

Third, the threat of work stoppages and harm to employees, causes employers to grant excessive wage and fringe benefits thus raising costs to consumers and reducing the competitiveness of firms in international trade.

Fourth, the damage to property and injuries to persons arising from union violence again increase costs to consumers and impose on them unnecessary burdens which they should not have to bear.

Fifth, unprosecuted violence by one union in a labor-management dispute encourages violent practices by other unions in other disputes. Thus much of the rise of violence on the labor front can be attributed to judicial and legislative neglect and permissiveness. This can be corrected by Senate Bill 613.

Sixth, the high costs of union violence are likely to increase unless steps are taken to hold union leaders accountable. This is because unions now find themselves in a new and less favorable environment. Employers, of necessity, are asking for "givebacks" and "hold steady" in a desperate effort to stop rising unit costs which are pushing them into noncompetitive market position. Unable to obtain demands at the bargaining table, unions in frustration, may well turn to violence. Why not? Union leaders have been exempted by judicial actions from legal restraints applicable to everyone else in the community. If this occurs it can only exacerbate the high cost problems of many U.S. industries. These excessive costs are a major contributor to rising unemployment.

Seventh, responsible union leaders should support Senate Bill 613. The latest Gallup Poll reports the public image of organized labor is at the lowest point in 42 years of poll taking. There are many reasons for this deterioration in attitude by both the general public and union members themselves. One reason is the tendency to violence in many unions. Permit me to illustrate. The National Labor Relations Board, not known among Labor economists as anti-labor, issued the following order to Teamsters Local 695 in Stoughton, Wisconsin, April 21, 1978:

> "...the union to cease engaging in mass picketing, hampering and/or blocking the ingress and egress of vehicles or persons; throwing rocks, stones, eggs, and tomatoes at, and breaking windows of buildings; threatening damage to vehicles: throwing rocks, stones, eggs, and tomatoes at vehicles; slashing tires, severing air lines, cutting electric wires, and smashing headlights of vehicles; throwing soda or a like substance onto vehicles; smashing the windshields of vehicles; breaking off, bending, or otherwise damaging the antennas and outside mirrors of vehicles; and spraying or splattering paint on vehicles.
>
> ...cease placing spiked boards beneath the wheels of vehicles; jabbing picket sign standards into the grills of vehicles; threatening employees with physical harm, with unspecified harm, and with picket signs and two by fours; hitting and jabbing employees with picket signs; hitting with fists, kicking, shoving, and spitting on employees, forcing the vehicles off the road and beating the drivers; threatening the employees with harm to their spouses; engaging in surveillance of employees; and in any like or related manner, restraining or coercing employees of Stoughton Trailers, Inc."
> Source: adapted from news releases from the National Labor Relations Board, April 21, 1978.

Should national labor policy, as established by the Congress of the United States and as interpreted by the Supreme Court, not only permit but approve this kind of union activity? By the absence of a positive policy it does. Senate Bill 613 should be acted on favorably.

INTRODUCTION TO STATEMENTS BY MARK PIRKLE AND CLAUDE LEE PRATER

The attached sworn affidavits of Mark Pirkle and Claude Lee Prater describe in detail an organized campaign of violence and intimidation waged against their small, family-owned coal company in Oakman, Alabama, by the United Mine Workers of America (UMWA). Because the miners chose to remain unaffiliated with the UMWA, the union subjected them to threats, sabotage, and violence, culminating in the besieged miners, surrounded by UWMA sharpshooters, being ferried to safety in a late-night, armed convoy by Alabama state troopers. The outmanned and outgunned troopers had earlier tried a helicopter rescue, only to have union terrorists foul their communications link with the trapped miners.

As chronicles of how union militants routinely practice coercion in many, if not all strikes and organizing drives, their stories bear firsthand testimony to the urgent need to amend the Hobbs Anti-Extortion Act, so that anyone, even union officials and their agents, will be subject to the same federal law as all other Americans.

State of Alabama September 13, 1978

County of Walker 1:19 p.m.

AFFIDAVIT OF MARK PIRKLE

I Mark Pirkle, being duly sworn on oath, do hereby come forth with this statement, as true and correct to the best of my knowledge.

I am an employee and part-owner of Oakman Mining Company, Inc. Jasper, Alabama.

Oakman Mining Company, Inc. began mining coal in Oakman, Alabama, on or aboutJuly 26, 1977. On or about August 1, 1977, I and my father-in-law, Claude Prater, met with Jerry McCoy, a United Mine Worker of America (UMWA) organizer, at the Holiday Inn in Jasper, Alabama.

When we arrived at the meeting place, McCoy was there with another man, who was introduced, but I cannot recall his name.

The purpose of this meeting was to convince us to join the UMWA. However, Oakman Mining Company, Inc. is a family-owned business that is operated almost entirely by family and close friends. We did not want to become members of the UMWA.

When it became apparent that we were in no way interested in joining the UMWA, Mr. McCoy pointed to a large, bearded man and asked us if we could see that man. We told him yes. He told us that if we did not join the UMWA, that man would put dirt in our coal at the Gorgas Power Plant. This man was allegedly an inspector at the plant. If this was done, it would affect the quality of our coal. I can't swear that it was done, but we started receiving severe penalities for ash in our coal from the Power Plant, where we should have been getting bonuses for our coal.

We had analysis taken by Metco Labs, Jasper, Alabama and it showed bonus quality coal.

Mr. John L. Davis, coal receiving department of Alabama Power Company, Gorgas Plant, came to the Oakman Mining Company pit and complimented us on the cleanliness of our coal.

We had another meeting or two with Jerry McCoy, and on each occasion, we were amazed at his boldness to threaten us and his total disconcern for our rights as businessmen and fellow human beings.

On February 2, 1978, at about 11:00 a.m., my brother-in-law, Bill Prater and I left the job site to go to town to get some supplies.

On our way back to the pit, we were stopped by Cecil and Roger Cupps who told us that they had been to our pit talking with Claude Prater, and had seen several car loads of people that they recognized as UMWA members, going towards our pit. They were certain that these people were going to cause trouble.

They had seen a State Trooper down the highway, giving a woman a ticket and had told him. He said that he would go down there and see about it. We went on, out toward the pit, but waited with the Trooper for help.

We waited for about fifteen (15) minutes, and during this time I saw Alfred Key in his old Ford pick-up coming out of the county road at a high rate of speed and turn toward Oakman. He had several people, whom I did not know, with him. There were also several other cars that I did not recognize, behind him.

After I started in, I saw Garland Woods going in.

While sitting with the Trooper, waiting for help, several other carloads of people went in.

The second car of Troopers arrived. It had two (2) Troopers in it. We followed the Troopers into the pit. When we got around to the road at Stancil Herron's house, all of the UMWA people were standing in the road. Claude Prater was standing on private property.

The UMWA people were shouting threats and obscenities at Claude and the rest of the workers. They said that he was going to die right there and he and the employees would not get out of there alive.

The UMWA people thought that Claude was unarmed and started toward him. He opened up his coveralls, exposing a weapon. The UMWA people then stopped and backed away, but continued the abusive language, and threats.

The UMWA people knew our names, but when we asked their names, they said "UMWA".

The Troopers talked with the mob for awhile, trying to get them to disperse, but they wouldn't.

The Troopers asked if we wanted to leave and we said yes. There were two (2) more of our people on the hill that we had to wait for. They were hiding our equipment from the UMWA people. The Troopers left without us, and we didn't see them again until we were rescued at about 1:00 a.m. the next morning. We had stayed at Stancil Herron's house and heard the helicopters. We left the house and flashed our flashlights at the helicopter. We thought that they could not see us, but we found out later that they could not tell which ones were us because the UMWA people were flashing their lights, too.

About 1:00 a.m., we saw a line of cars coming up the road toward us. The first one, a black Ford, pulled up in front of the house in the driveway and we ran back into the house. Someone got on the bullhorn and said that they were Troopers but we couldn't tell. They turned on the blue lights and we came out. They put us in the cars and brought us out. They told us that they had a "hellava time getting in and would probably have a hellava time getting out. Don't let anyone near the car. Use your weapons". When we left, rocks hit the car, but we saw no one. There were shots being fired around us, and the Troopers were throwing tear gas to disperse the mob enough for us to get out. When we got through, the Troopers took us to the Oakman High School for statements. They got a pair of bolt cutters and cut the lock off of the door to the gym locker room. They took us into the locker room, separated and took statements, from each of us.

They put us back into the Trooper's cars, radioed ahead for Jasper Police to meet us at Highway 69 and 269 to take us on home. When we arrived at the Junction, Jasper Police refused to take us home. They didn't want to "get involved". So, the Troopers took us on home. We arrived home around 4:30 a.m.

Further affiant states not.

Mark Pirkle

Kenneth Royce Spain Jr.
Witness

Witness

Sworn to and subscribed before me this 12th day of December, 1978

Notary Public

State of Alabama:
County of Walker:

AFFIDAVIT OF CLAUDE LEE PRATER

I, Claude Lee Prater, being duly sworn on oath, do hereby come forth with this statement as true and correct, to the best of my knowledge:

I am part owner of the Oakman Mining Company, Incorporated, Oakman, Alabama.

We have been in operation since approximately June 1, 1977.

We are a family-owned corporation, with stockholders consisting of: Myself, my wife, my son and our son-in-law.

On or about June 20, 1977, I and approximately ten (10) other men were working at our mine site. Approximately 30 to 40 men, who identified themselves as union miners, approached us bearing clubs, knives, beer and at least one (1) rifle.

They ordered us off of our own work site, because they were on strike.

We obeyed, and began to leave.

One of our truck drivers was leaving with a load of coal at the time. His name was James Hamrick.

The union miners stopped him and tried to get him to dump his load. He refused. The union miners then opened his door, and while he hung on to the steering wheel, they thrashed him with axe handles, on the legs, and tried to pull him out.

He finally succumbed to their violence, and dumped his load of coal.

Some time after this incident, Jerry McCoy, a union representative of the United Mine Workers of America (UMWA), came out to our work site. McCoy informed me that this sort of "incident" could happen again if we did not join the union. He also threatened to put dirt in our coal sample at the Gorgas Power Plant.

McCoy was very arrogant and pushy. We told him that we would meet with him, and he set the date and place.

On or about August 1, 1977, again a group of UMWA miners came to our site to close us down. This time they were peaceful, and we obeyed, and left. Alfred Key led this group.

Affidavit of Claude Lee Prater, continued, page 2

Shortly after this second encounter, we had a union vote, and meetings, at the request of McCoy. We voted "No", but still we got harrassed. By this time, we began receiving obscene phone calls. The callers would make statements like, "We're not going to let any scabby 'S.O.B.' mines operate in this state".

One caller threatened to burn our trailer down, and told us to get out while we were still alive.

In addition to these frequent calls, we were followed from time to time by men in pick-ups.

On December 6, 1977, we shutdown our operation in Empire, Alabama, to honor the UMWA strike.

On January 9, 1978, we were informed by friends, Cecil and Roger Cupps, that some UMWA miners had broken into our storage area and damaged some of our equipment. We then returned to Empire, Alabama, to make repairs on our equipment, and to inspect the amount of damage to the equipment.

On February 2, 1978, myself and four (4) other employees, Robert Mast, Neil Yates, Calvin Cogburn, and Leon Bourman, were on the job site. We were not mining coal. We were doing maintenance work on our equipment and pushing gravel around and removing overburden.

A group of about 15 men came up the hill to our site. They again had clubs, knives and beer. I picked up my .30 caliber carbine rifle, and walked down the hill to meet them. They told me that I was going to shut down and go home. There was constant name calling from the group. They referred to me as a "Scabby S.O.B.". They asked me my name, and I told them. I asked them their names. I knew one of these men, Alfred Key. The others gave their names as "UMW". They said, "Don't you know that there is a damn strike going on." I said, "That the strike was them--not Oakman Mines". They said that Oakman mining was involved now! That they had come up to "knock some heads".

Then a couple of men began surrounding me with their clubs. I fired a warning shot into the ground, and they scattered.

I then went back to where my men were, and told a few of them to hide the equipment and we'd get out of there.

While they were hiding the equipment, Mark Pirkle and Bill Prater returned with two (2) State Trooper cars. The Troopers told us to go with them to get out, but two (2) of my men were still on the hill. The Troopers left quickly, before we could all get together.

We then proceeded to the house of seige, and remained there until early the next morning, when we were rescued by Troopers. We were cut off from the county road and could not leave because there was UMW members along the road leading out. They were shouting that they would kill us if we came into the county road. They kept saying that we would not leave there alive.

Affidavit of Claude Lee Prater, continued, page 3

They maintained a patrol along the county road, and also you could see several camp fires burning up and down the road.

The Troopers then took us to the Oakman High School, and took our statements. We were taken home by the Troopers at approximately 4:00 a.m. on February 3, 1978.

The phone calls and followings have persisted even to this day.

Approximately July 1, 1978, we discovered molasses had been poured into our equipment, in an attempt to destroy it. We had moved our equipment back to Oakman when someone slipped into our mine area at night and poured molasses or syrup into some of the equipment. But, while the equipment was at Empire; the UMW went into the C and R coal mine, where our equipment was located on January 9. They broke windows, slashed tires, beat the doors off some equipment with clubs, and did quite a bit of damage at this time.

Further affiant states; that this harrassment and violence, and implication of violence, has cost me several thousands of dollars, and put emotional and mental pressures on me and my wife and employees.

Further affiant states not.

Claude Lee Prater
CLAUDE LEE PRATER

Kenneth Roscoe [illegible] Jr.
WITNESS

WITNESS

Subscribed and sworn before me,
this, the 17th day of November, 1978.

Notary Public

STATEMENT COVERING VIOLENCE BY UNITED MINE WORKERS PICKETS DURING 1981 COAL STRIKE

BY

MR. JOHN H. SEATS, EXECUTIVE VICE PRESIDENT
OF MARY HELEN COAL COMPANY, BELFRY, KENTRUCKY

The following statement is respectfully submitted as a chronology of events that occurred during the 1981 strike by the United Mine Workers (UMWA).

On April 1, 1981, three days after the strike was called by the UMWA, approximately fifteen (15) pickets gathered at the entrance to Mary Helen Coal Co., a nonunion operation, and stopped company employees from reporting to work. Their spokesman, a local union president, made the statement that they were not going to "baby-sit" Mary Helen, but they would make sure that the company would not run any coal. To preclude a repeal of the violence that occurred during the 1977 strike where two members of Mary Helen's management were assaulted, the company voluntarily stopped production hoping it would be a short strike and that no employees would be threatened or harmed.

After meeting with other independent operators in Pike and Floyd Counties, Eastern Kentucky, and requesting assistance from Kentucky Law Enforcement Agencies, Mary Helen elected to resume operations on April 21, 1981. Mass pickets from the UMWA again gathered at the entrance to Mary Helen, shouted threats, threw rocks and bottles at trucks entering and leaving, and culminated their efforts by trying to force trucks hauling coal off the public highway. No assistance was received from the local or state law enforcement agencies, even though it was requested.

On April 22, 1981, mass pickets again gathered at Mary Helen and continued the previous day's activity. The coal processed by Mary Helen is hauled from mines located twelve miles across a mountain from the plant. The trucks were forced to travel by convoy from the mines to the plant for mutual protection. About 1:30 PM, while returning to the mines from the plant, the ten-truck convoy came under gunfire from 200-250 UMWA pickets gathered along about 1/2 mile of the public highway. Eight of the ten trucks were damaged by gunfire to the extent that they were incapacitated and four drivers were wounded. Most of the shots fired were aimed at the people in the trucks and not at the trucks. All of this activity occurred after Governor Brown made a statement to the press that he was not about to "baby-sit" the independent operators, but he expected the UMWA to recognize the nonunion operats right to continue working.

Members of the Kentucky State Police were with the UMWA pickets prior to the ambush and did not prevent, investigate, or detain any of the people that participated in the ambush. They were furnished the license numbers of three vehicles that carried the guns used against the convoy from the ambush site but declined to accept same with a statement to the effect that "it would not do any good since the plates were probably stolen anyway."

At a meeting held on April 22, 1981, with the Kentucky State Police Commissioner in attendance, assurance of law enforcement was again denied. Also, during the investigation following the shooting, the County Sheriff has as a member of his investigating team the Vice President of Local District 30 of the UMWA. No investigation of the pickets was undertaken by any law agency. The sheriff restricted his investigation to what defensive weapons were being carried by the truckers. He also made the statement that Mary Helen had no business trying to haul coal since the UMWA was on strike and that we should abide by their wishes. The District Vice President (subsequently elected President) also stated that the pickets were under his control and that he would assure the trucks could be safely removed from the highway, but they had better be parked and not try to haul any more coal.

Subsequent to the ambush, Mary Helen and its employees were subjected to a barrage of threats, harassment, and interference of its daily activity by UMWA pickets and agents. Recorded instances were:

(a) April 22, 1981 - Employee of Mary Helen was told by UMWA organizer and County Deputy Sheriff that he had better sign a union card or he would be arrested every time he tried driving on public highways.

(b) April 23, 1981 - May 6, 1981 - Daily picketing of Mary Helen with threats to all employees entering to pull guard duty. Numerous reports of families being called and threatened with violence if they came to work at Mary Helen. Majority of employees would not cross picket line, citing fear for the safety of their families as reason.

(c) May 6, 1981 - At the request of employees, Mary Helen started doing nonproduction type work on day shift.

(d) May 7, 1981 - Number of pickets were increased, employees were blocked from entering company premises, and rocks were thrown at management employees reporting for guard duty. Request for law enforcement assistance was met by the statement that no action would be taken unless individual warrants were taken out.

(e) May 8, 1981 - More rocks thrown at employees entering property. One employee was stopped and he was told he and his family would be beaten up if he came back to work.

(f) May 8, 1981 - May 12, 1981 - Activity of pickets remained virtually the same.

(g) May 13, 1981 - Pickets at entrance at all shifts. Two employees pulling guard duty of 2nd shift were followed home by carload of UMWA pickets and threatened with bodily harm if they returned to work. One employee's family was threatened and he declined to return to work for fear of their safety.

(h) May 14, 1981 - Repeat of above actions.

(i) May 15, 1981 - Temporary restraining order obtained from Circuit Court. Kentucky State Police were ordered by court to serve order on named individuals but expressed great reluctance to do so. First copies of order were not served until two days after issuance. Statement was made that serving restraining orders was local Sheriff's job and not that of State Police.

(j) May 18, 1981 - UMWA pickets were again blocking entrance to company property in violation of restraining order. UMWA lawyer also informed company legal counsel that he was sending pickets back because they had not been on Mary Helen's property even though restraining order precluded UMWA from interfering with any company activity.

(k) May 19, 1981 - State Police refused to enforce restraining order. Stated court would have to issue violation of order and Sheriff would have to serve papers. Court reluctant to issue violation since local attorney, whose office adjoins company property, contended all of the pickets were his clients and were there for legal consultation. He was not in his office and building was locked. Same attorney is a State Representative for that district.

(l) May 20, 1981 - June 3, 1981 - Repeat of above activity with the addition of supply trucks being denied admittance to company property. Pickets threatened life of truck driver that crossed onto company property.

(m) June 3, 1981 - Court issued contempt citations against seven pickets. Sheriff's office expressed reluctance to serve same and only served these upon company's insistance.

(n) June 4, 1981 - UMWA still defied restraining order and contempt citations.

(o) June 5, 1981 - Strike settled and pickets left company premises.

The foregoing is a true and accurate statement of events.

STATEMENT BY DEANNA V. USSERY, OF HOT SPRINGS, ARKANSAS

UNION VIOLENCE MARRED OUR LIVES AND HOME

Thank you, Mr. Chairman, for giving me the chance to enter my story into the record.

I would like to say at the beginning that I believe what this Committee is doing today is some of the most important business in Washington. Because you are dealing with the issue of insuring worker safety during labor disturbances, what you decide will affect workers across our country. I say this based on firsthand experience of violence suffered during a labor dispute.

My own problems began on March 2, 1978, when I resigned from the United Steelworkers Local 6178, at the National Rejectors plant in Hot Springs, Arkansas. I could no longer agree to strike for the purpose of reinstating the union local's president, Frankie Joe Russell, who was fired from his job for threatening a company vice president.

So, with seven children and an unemployed husband to support, I decided to resign from the union and return to work. Four other women went back, too.

Not long after that, National Rejectors capitulated by rehiring Frankie Russell, ending the 64-day walkout, but beginning a running campaign of intimidation and terror waged against all five of us. In fact, the rehired Frankie Russell told a union meeting, "We'll make it so rough they'll have to quit."

True to his word, Mr. Russell did make life rough by inciting union workers to intimidate us. Until, finally, the harassment and slanderous remarks became so intolerable that on April 3, 1978, we signed a complaint to have certain union members arrested. As it soon turned out, that action only inflamed our tormentors all the more, and did nothing to alleviate our suffering.

Three days later, on April 6, two foremen came to warn me they were going to be my bodyguards, because there was talk of hurting "the scabs" during breaktime; they were anticipating trouble from the union. I was greatly concerned about the other women, but I was assured they also would be protected.

We were watched over for the entire working day. Then, at the end of the day, I walked around the corner to clock out. I was immediately struck by what I saw.

At the end of the dimly lit corridor, the big exit doors were flung wide open. Outside, in the bright light, were police cars and police officers with maybe all 400 of the plant's union members in the parking lot. They were screaming obscenities, and I heard the sound of breaking

- more -

glass bottles and metal clanging. I thought at any second I would have a heart attack. Sharp piercing pains hit my chest one after another. I didn't want to go outside, but I knew my son had come to pick up me, Sherrie and Dana -- two of the other women who went back to work against Mr. Russell's wishes.

I went outside, and sure enough, my son was trapped amidst the seething swarm of angry union militants. They wanted to yank him out of his car and end his scab-chauffeuring days. I heard them scream at him, and I ran to the car with Dana, while Sherrie stayed inside with the police.

Once inside the car, we locked the doors. I prayed so hard for God to protect us and please get us home alive that my hair was dripping with perspiration. Being so petrified, with the crowd howling at us, I was soaked from top to bottom. It sure seemed like bad odds for us -- 400 crazy individuals attempting to kill four people. Finally, the police escorted us home. But once there, they immediately disappeared.

If it wasn't for a very special foreman, Don Garman, who had the plant switchboard operator notify the police to be on hand, I wouldn't be here today to talk to you.

Only by the grace of God answering my prayer did we all make it home safe. I wish that whole ordeal could have only been a bad nightmare. But God knows, it was reality.

On April 10, 1978, four days after the parking lot incident and seven days after filing the court complaint, we had our court date at Hot Springs City Hall, with Judge Carl Mayander, presiding. After hearing our stories, Judge Mayander told us he would hand down his verdict at the end of the week. The end of the week has come many times over, but, so far, the judge has never yet issued his decision.

I feel Judge Mayander's failure to rule on our complaint didn't do us justice. In Hot Springs, a common drunk does time or picks up trash for his sentence. But, as our case proved once again, in our town it's who you know and how much money you have for high-powered lawyers that tips the scales in your favor.

This knowledge only heightened my fear. For the five of us who went back to work before the strike was over, there now seemed no one to turn to for protection. Even so, something inside me said not to run and hide, but to stand firm for what I believe in. Let it be known I love God and country, taking the stand for justice. That's just what I did, too.

After the City Court failed to act, I guess the union members were patting themselves on the back for putting the fear of death into us. Feeling this made me feel stronger than ever. I knew that I did the right thing by resigning

- more -

from their violent and dictator-run organization. Instead of supporting it, I put an amount equivalent to the union dues money toward feeding orphan children and supporting the charity, Christian Development. For this, I was in trouble with the union.

At this point, the five of us all felt the union members had done their worst. Well, we were wrong.

On the evening of April 20, 1978, just a week-and-a-half after Judge Mayander failed to make a decision, I was watching television in the den of our home when all hell broke loose. Gun shots cracked the quiet. Then a car outside roared away. Later, I learned that eight rounds of magnum slugs from a 12-gauge shotgun were pumped into our home. I couldn't believe it.

My little daughter's bedroom was demolished by three of the shots. One hit the mirror on her dresser and shattered it into a million pieces. Another shot blasted through her left window at the head of her bed. And a third magnum shell tore into her bedspread, leaving about a foot-long gash in her mattress. My Sheila Ann would have been murdered if she had been sleeping in that bed. I thank God my little girl was at her father's house that night.

She was only eight years old at the time of the shooting. It was awfully hard to explain to her how anyone in this world could be so ignorant and irresponsible as to fire shots into someone's home, knowing full well they could kill someone. I know it crushed her heart to see her bedroom floor covered by a puddle of broken glass. But it had to stay that way until the detectives checked it out.

The Hot Springs Police Department and the Garland County Sheriff both filed reports. And the local newspaper, THE HOT SPRINGS SENTINEL RECORD, sent a reporter to cover the story. They all were shocked to see my baby's bedroom. No longer did they think the union's actions were confined to name calling and intimidation. They knew then the union had attempted murder.

Early the next morning, the 21st of April, my friend Dana called from a pay phone to tell me everyone at the plant knew our home was attacked the night before. In the background, I could hear union members hollering at her. I recognized one member's voice coming over the phone. She said, "Hey, heard the scab's house got shot up last night." Now, I wonder, how could that union member have any knowledge of the shooting, when THE SENTINEL RECORD newspaper story wasn't printed until the second day after the attack, April 22?

That evening of the 21st, still the first day after the shooting, the detectives arrived and surveyed the scene of the crime. All they had to say was that the perpetrators were smart because a magnum slug cannot be traced. And if they were me, they would have my child sleep in another

- more -

room. To tell the truth, I didn't need the detectives to tell me that. I guess as long as they knew magnum slugs were used the case was virtually closed -- not much of an investigation from our Hot Springs detective bureau.

You could never know how much tension the shooting into our home caused, unless you had experienced it yourself. Our children were not allowed to walk in front of the windows when it got dark. They had to lie on the floor to watch TV, because we feared more shots flying through the windows. Every night for three months, my son and I stood watch with a double-barreled shotgun and a 30-06 automatic -- just in case our would-be assassins returned. We fully intended to protect our family.

Eventually, with the help of the National Right to Work Legal Defense Foundation, the five of us who originally resigned from the United Steelworkers filed a civil suit against Local 6178 and 16 of its members, charging it with waging an arm-twisting campaign to frighten us from our jobs. We won the suit, and last February 17, all five of us received damages from the union.

Nonetheless, all the money in the world could never erase the emotional scars resulting from our ordeal. No doubt the violence and terror tactics waged against us have left permanent marks. None of us feels we could ever again work at National Rejectors where Frankie Joe Russell is still head of the union local.

My experience at the hands of Local 6178 makes it important to me to speak out for justice. If I could be victimized by my own labor union, with no criminal penalties assessed against the perpetrators, the same could happen to other workers elsewhere. And I shudder to think of other Americans caught in the same bind, where the local police either will not, or cannot, do what is necessary to protect them. I believe if union leaders could reap a stiff penalty for sowing the seeds of discontent, they would not be so quick to inflict pain on individual workers in the rank and file, who dare disagree with them.

Looking back now on the entire terrifying experience, I am thankful for the courage and strength my belief in God provided. I am also thankful for the courageous attorneys at the National Right to Work Legal Defense Foundation, as well as attorney Mark Clark in Hot Springs. They truly fought a long, hard legal battle. Without them, Local 6178 eventually might have gotten away with murder.

I also commend the chairman of this subcommittee, Senator Mathias for holding hearings, and I wish you Godspeed in this terribly important work.

Deanna D.
Ussery

STATEMENT OF RON AND KAREN YOKOM

MR. YOKOM WORKS AS THE EMPLOYEE LIAISON OFFICER FOR R*U*R INDUSTRIES IN NORTH EAST, PENNSYLVANIA.

Mr. Chairman, my wife and I appreciate the opportunity to submit our story to the record of these hearings. The following chronology and the accompanying incident reports are a detailed account of the violence surrounding an ongoing labor dispute at R*U*R Industries. Unfortunately, our efforts so far to get relief from local law enforcement officials have proved unsuccessful.

June...1981 - Beer bottle of gasoline hit the southwest corner of our house and burst into flames.

June 15, 1981, 9:30 a.m. - South bedroom windows were broken out by Art Reed and wife, William Reed and wife, (Art and William had hearings August 28, 1981. They appealed the verdict.) Mr. Caldwell, from Erie, was also involved at that time. Caldwell may well be a union official with another local, possibly Uniflo, hearing set for November 9, 1981. Eight-year-old son was in the room when the windows were being broken.

June 16, 1981, between the hours of 12 midnight and 3:30 a.m. - Art Reed stood on our front lawn, 6 feet from our window, and with a slingshot, broke the center pane of glass in the 6-foot window of the living room, and spent the next several hours throwing stones at the house. The police were called. Captain John Spencer told us that he would not come over because there were too many of them. (I) Ron then called the police chief at home (3:00 a.m.). He said there was nothing that he could do, because there was only one officer on duty, which is the usual number on duty.

We had two neighbor children staying over and, to be safe, we had them taken home. Stones did enter into the bedroom where the children sleep, those windows had been broken out the day before. It was nearly 6 a.m. before our children got back to sleep.

June 16, 1981, 8:30 a.m. - Jim Geertson, using a slingshot, broke the upper left south bedroom window. He shot at least two times. As he was getting ready to shoot the third time, I told him that was enough. The police were called, Chief Cim responded, I went to the station and filed reports. When we returned, about an hour later, Geertson was gone.

June 16 to 21, 1981 - We left our home to stay with friends.

June 17 and 18, 1981 - Art Reed and Jim Geertson were seen by Security, employed by R*U*R, breaking out the picture window of our living room. Hearing set for October 28? November 9? Marbles and ball bearings were used.

June 21, 1981 - From the time we returned home that afternoon, union trustee Raymond Palmer, after much verbal

- more -

harassment, broke out the back window of our 1973 Buick. He was seen by the Security Guard employed by R*U*R. Hearing was August 28, appealed verdict. Reset for (date unknown.)

June...1981 - Front windshield of car broken out, person unknown, had to be standing in yard as car was parked in driveway.

We were without a car to drive until we got the windows fixed August 1.

Left North East for a week, August 8 to 16, we were in Ohio.

August 25, 1981 - Ed Straine and Sam Walker...much verbal harassment after we returned home from football practice, children became upset, approximate a half-hour later we heard glass breaking, when we went to check it out, the rear windshield was smashed, no one saw Walker or Straine do it, but we know that it was them.

August 27, 1981 - Much verbal harassment, slanderous remarks, lasted about 30 minutes (11-11:30 p.m.).

August 28, 19, 2 a.m. - Dave Surelick walked away from Clay Street plant entrance. He returned a few minutes later, walking towards the plant entrance. Some 50 feet before reaching it, he crossed the street and walked directly to our car and started smashing out the front windshield. Seconds later, Dick O'Neil joined him, breaking the right side of the windshield.

Police were called.

Twenty minutes later, Surelick came back and broke the left front, side window, a couple of minutes later, O'Neil came back and broke out the right rear, side window.

David Bartlebaugh, NOT an employee of R*U*R, came over the same time O'Neil was there, and started on the front side window. He had a baseball bat, I told him to stop that, he turned, took a couple of steps and threw the bat at me, breaking the window screen. He was about six feet from me.

Police were called the second time, we were told that they were very busy at the Lake Street side, and we should just keep track of who did what. Later, we heard that the police took his radio off the set -- I believe it was the police captain. Also heard that police Sgt. Huber was not willing to be involved in any of this trouble. Thank GOD that there are three officers who are willing to help -- Stills, Allen, and Peters. I also understand that the Mayor of North East was unwilling to become involved in this strike.

Perhaps twenty minutes after Bartlebaugh threw the bat at me, he returned with a large rock. I told him to drop it, he looked at me for a second or so, then raised the

- more -

rock. At that time he was about twelve feet from me, but about seven to eight feet when the rock was thrown. I ducked as the glass from the double-paned, 15" by 32" window shattered all over me, and across the room, which is 12 feet wide.

Just prior to this, O'Neil had walked into the side yard, up past the car and took our wheelbarrow. He took it up the street and put it into the back of a truck. Jim Hanson witnessed all of this also.

This took place over a period of two hours.

Hearings were held, Bartlebaugh was charged and is serving three-to-six months at county prison, ordered to pay restitution for all damages done to our property that night, but no arrangements have been made, as far as we know. This hearing was in September, with Abate. The D.J. O'Neil's and Surelick's hearing may be October 28, November 9, 13 or 17. About 5-5:30, someone threw a lighted flare onto the porch of house owned by R*U*R.

August 28, 1981 - We had sent all three children to stay with my sister, because we knew that something was happening. Left home again for a couple of days, so we could get settled down again.

August 25, 1981 - Saw union president Rich Melon and union secretary Harry C. Foster throwing stones and bottles at security van. Others were also involved, Carl Elders, Lester Fisher, (others unidentified). Melon is charged with arson on that same night, a lighted flare was thrown at the house owned by R*U*R. Two security guards reported seeing him light and throw the flare. He has been bound over.

July, 1981 - Foster and Dave Devers, union official from Erie or Pittsburg office, were at picket line, Foster was mouthing off to me, then told the other guys that they should all line up and piss on us. Devers laughed. They left shortly after that.

September 11, 1981 - Strikers were drinking and smoking "pot" on 4-to-8 shift. Lester Fisher, Raleigh, Maas, union members, and Duane Wesley, a friend of Maas. About 7:30, Wesley threw a wine bottle at our 3-year-old daughter, Suzy. The glass shattered and flew up onto Suzy's leg. They all thought it was funny, and Wesley said, "Good aim." He was arrested on October 1 and fined $131.00.

In October, he was heard to say that "he would get that little kid for squealing on him." Witness is Dave Artise.

October 3, 1981 - At 3 a.m., I saw a striker come across our lawn, heard a noise, and when I looked down the stairs, the screen in the living room window had been cut and the plastic that we put up had been pulled at. I did not know his name.

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Between June and September, a pile of 4' by 4's were stolen and burned. A wooden frame for flowers was stolen and burned, comment was made to me (Ron) by Carl Elder -- "Hey, Ron, we need some more wood."

September, 1981 - Over a period of a week, the corner fence was stolen and burned, also a two-foot-long log that was being used in a flower bed. Flowers were ruined.

On August 28, O'Neil had broken one rail of the fence. Elder commented, "You should thank us for cleaning up that eyesore of a fence."

September, 1981 - The same night that the last of the fence was stolen, someone barfed on our front porch. They made the comment to me (Ron) and our son, Andy, like "I feel sick. I think that I have to barf."

Over the past several months, we have had smoke from their fires, the ceilings, walls, curtains, etc, are a mess. In July, we had friends spending the weekend and they built a fire and spent a half-hour or so burning the plastic of a lawn chair. All of this smoke and fumes came in the house.

September 24, 1981 - As my sister Sandie was leaving the house in her car, Craig Rotunda stepped out in the street and waved a club at her and made some remarks. Later that evening her son Mike, age 9, stopped on his way home from football practice. When he was leaving, the pickets were standing on our corner and started picking on him. He was frightened and came back into the house. He stayed until his Mom came back from Erie. He (Ron) was with the children, I (Karen) was with Sandie. It was about ten o'clock when we returned. The strikers were Craig Rotunda, Ed Straine, Sam Walker.

June - October, 1981 - Strikers set off explosions in burning barrel -- all hours of the night. Children are very disturbed about all the trouble going on around here. Having an effect on their school work and their general welfare. Three-year-old Suzy, on October 10 on the way to Gramm's asked "if those mans were up here too."

Strikers have obscene signs up on trees, "Stud Service," "Weekend Specials," "Stud Service," etc.

August 27, 1981 - Before all the trouble started, I (Ron) saw Dave Devers at the picket line.

Dave Devers is also on the film the morning after the car wreck that film was taken by Channel 24 News; Devers is elsewhere on that 45-minute film.

Before every big outbreak, Foster, Melon, or one of the big leaders is seen.

It is general knowledge that R*U*R had trouble getting an injunction, and with any enforcement of the injunction.

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Erie judges, sheriff department, along with district justice and two officials.

It is my understanding that the sheriff's department was here on August 28, for a short time. I understand that one officer was hit and knocked to the ground, and that is when the department left the area.

I personally saw members of the sheriff's department laughing with union strikers and not helping workers get into the plant, also one deputy said to strikers when I (Ron) was on his way to work, "Here comes that Scab."

I also heard that when the borough officials finally decided that there had been enough trouble that the sheriff's department would let the state police come in to help take part in settling the riot.

Judge Dyere in Erie even said that he could have made a mistake when he signed the injunction orders, so that they were not enforceable. He had to review it to be sure that it was O.K., which, of course, it was.

North East District Justice Frank Abate, told the defendent in July that they should be good boys and take out their anger at the Cherry Festival, use the ring-the-bell game, etc.

(We) believe that all hearings that day were postponed. D.A.'s office was there that day, with some dumb remarks, Ron, myself, Doug King, and others were there that day. I'm sure that one of them remembers what was said.

Mr. Robert Saxton, Jr., is now hearing all R*U*R cases, guess he is O.K. I (Ron) have lost several days from work because of hearings being postponed. The hearings are scheduled so close together that they are seldom all heard that day.

There are times that there is no court stenographer or representative from the D.A.'s office there.

October 19, 1981 - Roger Reed threw rocks at our aluminum building for about a half-hour. The time was 11-11:30 p.m.

October 21, 1981, 8 p.m. - Front living room window broken out by strikers Lester Fisher and Paul Deramio. There were five children in the room at the time, the glass flew about 20 feet into the kitchen, where Ron, my sister and I (Karen) were sitting. When the window was broken, the screen and plastic covering were also broken.

October 26, 1981 - On the picket line were Harry C. Foster, union officer; Ray "Chick" Palmer, union officer; Ed Walker, Ed Straine, Bill Drohn, (time 10-11:00 p.m.). Foster was harassing guards, beating on the gate, shouting loud and rotten obscenities. Guard walked away, Foster spit several times on the gate lock.

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Foster walked into our driveway and picked up several large stones and threw them at the house owned by R*U*R and at a car parked inside the gate.

"Chick" Palmer set several nails in a mud puddle near the entrance gate on the turn of the road.

We have not been able to get any assistance from law enforcement agencies, not local, county or state.

Court injunctions have proven useless, on enforcement on mass picketing, there have been NO results.

Personal problems caused by strikers. We had planned to put up a replacement chimney that was to vent our gas heat, but as of this time it is still unvented, and is a safety hazard.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION ON S. 613, AMENDMENTS TO THE HOBBS ANTI-EXTORTION ACT TO THE SUBCOMMITTEE ON CRIMINAL LAW, SENATE JUDICIARY COMMITTEE

February 23, 1982

The American Farm Bureau Federation is the nation's largest general farm organization. It is a voluntary, dues-supported, nonprofit organization of more than three million families in 48 states and Puerto Rico, including more than three-fourths of the commercial farm and ranch operations and producers of all agricultural commodities.

Last January at the annual meeting of the member State Farm Bureaus the voting delegates adopted a policy statement that has a bearing on S. 613:

"...The unbridled use of violence and coercion in the field of labor relations in agriculture has reached such a serious level in several states that action must be taken by the Congress to restore order and bring about procedures that will protect the rights of workers, farm employers, and the consuming public..."

We support the enactment of S. 613. We believe it would restore the Act to the original intent of Congress before the Act was interpreted by the Supreme Court in the 1973 Enmons decision to exclude jurisdiction over labor unions so long as they are pursuing the legitimate goals of organizing and representing workers in collective action. We see no justification for such an exemption, particularly one granted by a legislating Court instead of the Congress.

It is unacceptable that a privileged group of organizations, representing only a fifth of the nation's work force, can proceed with immunity to threaten and carry out violent actions for the purpose of extorting their demands on public and private employers. Aided and abetted by the Enmons decision, union militants routinely practice coercion in many of their strikes and organizing drives. The public record is replete with such coercive actions; and thousands of victims have learned the hard way that local law enforcement officials are not prepared, not capable or not willing to cope with this lawlessness.

As a general rule, Farm Bureau members rarely call for expansion of federal jurisdiction; but in this case, we believe the Congress acted wisely in 1946 in addressing the growing problem of violence and extortion by enacting Section 1951 of the United States Code. The misguided decision of the Supreme Court in 1973 did not change the situation, except to exempt labor unions from jurisdiction for all practical purposes.

It is interesting to note that in dissenting from the majority decision of the Court, Justice William O. Douglas said, "The Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do."

It must be borne in mind that labor unions have been granted, and invested with, special legal means of excercising control over individual workers and employers; and by and large, they are exempted from any significant financial responsibility for the actions of their agents. These special rights are spelled out in numerous federal labor statutes, including the National Labor Relations Act, exemption from the Clayton Antitrust Act, and many others. The monopoly power of the labor unions not only affects major segments of the private sector, but reaches into the public sector, with the growing unionization of public employees.

Farm Bureau recognizes the right of workers to organize and to pursue collective actions in a peaceful manner. We do not condone the use of violence or coercion to achieve legitimate union goals.

Not only have we witnessed the use of violence on the part of striking police officers, fire fighters and other vital public employees; but we in agriculture have experienced the impact of coercive tactics in the organizing and representation actions by the United Farm Workers of America, particularly in California. The leaders of this union talk nonviolence, but have repeatedly condoned violent actions by their agents and members. It was in response to that situation that the Farm Bureau voting delegates called for action by the Congress.

We do not agree with those who claim that enactment of S. 613 would endanger the basic rights of working people in organizing unions and carrying out the legitimate actions and goals of such unions. If a union has the support of most workers at a given place of employment, why is it necessary to engage in violent actions to achieve its goals? Why should the public have to stand idly by, witness such violence, and feel frustrated that nothing can be done about it?

While we do not underestimate the need for local and state laws and law enforcement concerning labor extortion, we cannot ignore the fact that labor unions often act on an industry-wide, interstate basis and are, in fact, involved with interstate commerce. We believe there is clearly a need for federal law on this subject, which Congress recognized in 1946.

We call upon this Committee and the Congress to approve S. 613 at the earlisest possible date. It is long past time that labor union leaders and their agents be held responsible for the pattern of violence that now characterizes too much of their organizing and representation activity.

STATEMENT OF

AFSCME®
American Federation of State, County and Municipal Employees
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Telex 89-2376

March 10, 1982

The American Federation of State, County and Municipal Employees (AFSCME), a labor union which represents more than one million public employees nationwide, appreciates the opportunity to submit a statement opposing S.613, which would amend the federal extortion and robbery statute, commonly referred to as the Hobbs Act (18 U.S.C. §1951), by expanding its coverage to violence committed during a labor-management dispute. It is AFSCME's position that such expansion of present law regulating picket line disputes is (1) unfair to workers who engage in collective bargaining and (2) unnecessary since sufficient and effective legal remedies already exist to prosecute violent incidents. Further, in our experience it has been the protesting workers who are in need of greater protection from violent acts by employer agents and, occasionally, law enforcement officers themselves.

The Hobbs Act was enacted in 1940 to protect those involved in interstate commerce from robbery and extortion. Extortion is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear ..." The law was interpreted by the U.S. Supreme Court in 1973, when the Court held, in U.S. v. Enmons (410 U.S. 396) that the Hobbs Act was not intended to "...put the Federal Government in the business of policing the orderly conduct of strikes."

Let me assure you that AFSCME, as a proponent of the Enmons philosophy, does not advocate violence or threats of violence in a labor-management dispute, nor do we propose that such conduct go unpunished. One of the objectives of AFSCME, as propounded in our Constitution, is our commitment "to the process of collective bargaining as the most desirable, democratic, and effective method to achieve [better terms and conditions of employment]." Employees, as well as the public and the employer, suffer from strikes, but on rare occasions, strikes do occur because employees who have provided an employer with genuine services seek fair wages for those rendered services.

Furthermore, if violence or threats of violence do occur during a labor-management dispute, such conduct by labor union members is punishable under state law by state and local officials. As noted in a January 16, 1980, letter from the Honorable Ray Marshall, former Secretary of Labor, to the Honorable Benjamin Civiletti, former Attorney General:

> "There is no more reason to make employee violence subject to the Federal Criminal Laws than there would be in making employer violence subject to these provisions. These isolated incidents of violence, which ordinarily could erupt in a tense strike situation, while not to be condoned, are far better dealt with by local authorities enforcing state and local laws.
>
> We are not convinced that state and local law enforcement officials are currently unable to deal with the problem of strike-related violence..."

Even the House Judiciary Committee, in its Report to accompany H.R. 6915, the Criminal Code Revision Act of 1980, noted:

> "Based on testimony before the Subcommittee on Criminal Justice, the Committee is in agreement with the Secretary of Labor that no real evidence has been produced to show that states cannot adequately handle incidents of violence arising from labor disputes, nor that the limited resources of the FBI could be used to investigate such incidents more effectively than the resources of local and state law enforcement." [Report No. 96-1396, September 25, 1980, p. 299]

More recently, the Final Report of the Attorney General's Task Force on Violent Crime stated:

> "We do not believe that the Federal Government should direct or subsidize the ongoing operations of state and local criminal justice systems or should supercede those systems with a national police or court or correction system. But we do believe that by providing useful services, national perspectives, and financial assistance for specific important purposes, the Federal Government can do much to improve the coordinated federal-state-local fight against crime."
> [Attorney General's Task Force Report on Violent Crime, Final Report (August 17, 1981), p. 62.]

While AFSCME views strikes as a last resort which should never be undertaken unnecessarily, and while we oppose violence and threats of violence, we have, as a union been confronted with both situations. Moreover, local law enforcement officials adequately handled the incident. We refer to the Memphis (Tennessee) Sanitation Workers Strike of 1968. Dr. Martin Luther King, Jr. met his untimely death in that city, where he marched with striking AFSCME Local 1733, whose membership consisted of sanitation workers in the Memphis Public Works Department. At that time, the members of the Local were working under abominable employment conditions including, in the words of Dr. King, "starvation wages." The Local's employer, the City of Memphis, wanted no relationship with our union and the City Council refused to recognize the union as the official bargaining unit (even though the union had existed for four years). Our members, mostly 50 to 60-year old black men with families, decided that the only way to bring dignity, decency and equality to their work was to strike. The strike was, in our members' minds, not only for economic purposes, but a strike for social recognition.

During that strike we were supported by religious groups, civil rights groups, labor union members and others. We marched almost every day. Despite our assurances of non-violence to local officials we were often met by local police armed with mace and billy clubs. We had sit-ins at the City Hall. Many people were arrested. Unfortunately, on one particular day, a few young people, not directly involved in the march, expressed frustration by breaking windows. The next day, we were met by tanks, half-tracks, jeeps, and the National Guard, which looked extremely surprised to see marchers armed only with picket signs. In the last few weeks of the march, Dr. King was assassinated. We marched one last time, and, subsequent to these events, AFSCME Local 1733 prevailed. We won union recognition and entered into a contract providing fair wages and better working conditions.

During all of this activity, many people involved in the marches and sit-ins were arrested and jailed. However, local police handled all incidents arising from the strike. Though we were not always pleased with the manner in which the local law enforcement officials acted, the fact still remains that federal intervention was not necessary.

AFSCME believes that a compelling need to expand federal jurisdiction into this type of labor-management dispute has not been shown. Such an expansion could lead to federal harassment of union members and would have a chilling effect on union activity. The Federal Government already has adequate means to address unfair labor practices through the National Labor Relations Board. Moreover, during this period of decreasing available resources in the U.S. Department of Justice due to Administration-proposed budget cuts, and the dramatic increase in violent crime across the nation, it is foolish to divert federal efforts to picketers, who are merely exercising their Constitutional right to free speech and who are already subject to local laws.

While our comments have been specifically geared to the AFSCME Sanitation Workers Strike in Memphis, Tennessee, we must say this about public employees generally. Since 1970, many states have enacted collective bargaining laws. Approximately half have such laws and about 35 have special laws that affect some portion of public employees. Public employee unions have grown in numbers and represent the fastest growing and, some would say, the most aggressive unions in the labor movement today. According to the U.S. Department of Labor, in 1980 there were over 6 million public employees in federal, state and local governments who could be counted as members of labor unions and employee associations .

The increase in public employee union activity has presented new challenges. Public administrators have looked for ways to prepare their managers for collective bargaining. Public workers, who provide vital services for the efficient operation of government units, have sought fair wages and decent working conditions for the quality services they perform. In most cases, terms and conditions of employment are agreed to through the collective bargaining or arbitration process. But again, where strikes do occur and there is a breach of the peace on a picket line, local police and law enforcement officials have authority under current law to investigate, prosecute and punish any wrongdoing.

AFSCME urges you to oppose S. 613 and to retain the current scope of the Hobbs Act as enacted by the Congress and interpreted by the Supreme Court.

Statement
of
The National Association of Manufacturers
on
S.613, Legislation to Amend the Hobbs Act
before
The Senate Judiciary Committee:
Subcommittee on Criminal Law
March 26, 1982

I. Summary

The National Association of Manufacturers is a voluntary business league which represents 12,000 member companies. NAM members produce nearly 85 percent of the nation's manufactured goods and negotiate the vast majority of major collective bargaining agreements reached between American manufacturers and American manufacturing workers.

In the following statement, the NAM has conveyed its support for Senate bill S.613 introduced by Senator Strom Thurmond (R-SC). The bill has been introduced to provide protection for employers from union strike violence. It would extend federal jurisdiction to include labor violence. S.613 would cover those instances of labor violence which result in major bodily injury to an employer or his agents or employer property damage in excess of $2,500. It would provide maximum penalties for violators including life sentences and $250,000 fines.

In the following statement, the NAM supports the extention of federal jurisdiction into the area of labor violence as wholly appropriate and consistent with the federal government's already pervasive role in labor management relations. Since the need for S.613 and the provisions of the bill have been reviewed at length before the Subcommittee, the NAM, in the interest of brevity, will confine itself to a discussion of how union strike violence often forces employer's to include premiums for strike violence into their collectively bargained compensation agreements. Thus by controlling violence, S.613 would help protect the integrity of the negotiations process.

The NAM would like to thank the Senate Subcommittee on Criminal Law for providing us this opportunity to express our support for S.613.

II. Identification

The National Association of Manufacturers is a voluntary business league which represents approximately 12,000 member companies, eighty percent of which are considered small or medium sized businesses. The NAM is also affiliated with an additional 158,000 businesses through its Associations Department and its close relationship with the National Industrial Council.

NAM members produce nearly 85 percent of the nation's manufactured goods and employ approximately 75 percent of all workers employed in manufacturing. The vast majority of major collective bargaining agreements reached between American manufacturers and American manufacturing workers are negotiated by companies which are members of the NAM.

In light of the significant role NAM members play in the negotiation and administration of collective bargaining agreements, we take a great interest in legislation which affects management-union negotiations. We are particularly concerned with Senate bill S.613. The enactment of S.613 would mark congressional recognition of the overriding influence labor union strike violence and labor union extortion has on the outcome of collective bargaining negotiations. The NAM supports the basic framework of S.613 as an appropriate federal response to the problem of union strike violence and union extortion.

Case studies which demonstrate the need for the passage of S.613 have already been presented to the Criminal Law Subcommittee. The Associated Builders and Contractors vividly recounted the plight of the H. K. Johnson Corporation while the

National Utility Contractors presented a description of the union violence sustained by the Felton Construction Company. Since the need for S.613 has been aptly demonstrated by numerous business organizations we will restrict ourselves to a theoretical discussion of how union strike violence affects the collective bargaining process.

III. The Appropriate Role of the Federal Government

With the passage of the National Labor Relations Act (NLRA) in 1935, the federal government exercised jurisdiction over labor-management relations and granted labor the right to bargain collectively. By passing the NLRA, the federal government effectively reserved from state jurisdiction all responsibility for matters it considered to be germane to labor relations. Heretofore, Congress has not considered union strike violence to be a major factor in strike resolution but has perceived it only as an incidental evil associated with the collective bargaining process. Congress has, therefore, relagated the policing of such activity to state and local authorities.

NAM believes that union strike violence can have an adverse effect on agreements struck between employers and their former striking workers. We further contend that because union strike violence often has a major economic impact on strike resolution negotiations, it is consistent with the federal Government's existing labor relations authority to clearly state that such activity falls under its jurisdiction.

IV. Dynamics of Collective Bargaining

To understand the effect strike violence has on collective bargaining, one must understand the dynamics of collective bargaining. During contract negotiations the union makes a series of bargaining demands to which the employer responds with a series of counter proposals. Both sides recognize that if they fail to agree on a compromise package, a strike will occur. A strike serves the economic function of imposing legitimate costs on both parties and thereby causes one or both parties to mitigate their demands. A strike exerts costs on the employer in the form of lost production time and on the union workers in the form of lost wages.

When negotiating an agreement, both sides must continually estimate the cost of accepting their counterpart's last proposal and, by doing so, abandoning their own. For an employer this would take the form of making greater contract concessions while for the union it would be accepting a smaller compensation package. Conversely, when negotiating an agreement, both sides must also continually estimate their cost of disagreeing. The cost of disagreeing for negotiating parties is based respectively on their estimate of how long they will have to sustain a strike and thereby forego production time or wages before their counterpart will be forced to accede to their demands.

For each given set of bargaining demands and counter proposals, both sides must weigh their cost of agreeing vs. their cost of disagreeing. When the parties' respective demands and counter proposals converge to the point where it is cheaper for each party to agree rather than disagree, a final settlement is eventually reached.

It is important to realize that the cost of agreeing and disagreeing for the respective parties changes as the demands change. For example, the higher the union's demands, the greater the employers cost of agreeing. This is because were the employer to agree to the union's demands, his compensation costs would increase. It is equally true that if the union's demands are higher, the employer's cost of disagreeing would be lower. This is because workers tend to be willing to strike for a progressively shorter period of time for an additional further incremental unit of wage increase. Thus a union concession is more easily won.

IV. Strike Violence and Collective Bargaining

Strike violence becomes a factor in contract resolution since it raises the employer's cost of disagreeing with the union's demands. Strike violence exerts additional costs on the employer above the costs imposed through lost production by the strike itself. Strike violence can result in serious property damage and in injuries to the employer and his non-striking workers.

An employer who is faced with mounting strike violence must begin to calculate expected future disturbances into his cost of disagreeing with the union's demand. The key point here is that this can raise the employers' cost of disagreeing with the union's demand above his cost of agreeing. This can lead him to make concessions he would not have ordinarily made.

Our discussion up to now has concentrated on the idea that the bargaining strength of negotiating parties is very much a function of the demands and counter proposals being considered. It is not a stagnant function which superimposes an outcome on every bargaining conflict. Strike violence can and does enhance the union's bargaining strength for a given set of demands. The obvious implication of this finding is that strike violence can, and often does, lead to higher employer bargaining concessions.

V. Strike Violence Defined

Union strike violence falls into three general categories. 1) Whenever a union organizes a picket line during a strike there is a high potential for spontaneous acts of violence and property damage. This spontaneous violence is usually minor and has little impact on the outcome of negotiations. 2) As strikes progress, union members often become hostile toward the employer, and they take out their frustrations by committing vengeful acts of violence. These types of violent attacks can become very costly and dangerous for employers. 3) The most serious type of union strike violence involves a coordinated campaign against an employer. This type of activity is undertaken with the intent of forcing the employer to concede to the union's otherwise legitimate collective bargaining demands. We will refer to this type of union violence as extortion or extortionate behavior.

VI. Contents of S.613

Each type of union violence described above has to be addressed differently. S. 613 provides for these required contingencies.

From the outset we must recognize that the right of union members to conduct peaceful strikes must not be jeopardized by any anti-strike violence legislation. The sponsors of S.613 have acknowledged this constraint and have, therefore, precluded all types of spontaneous minor violence that occurs on strike picket lines from the coverage of the act. They have done this by restricting the jurisdiction of the bill to those acts of violence which cause $2,500 worth of damage or more. Thus normal picket line activity and its associated incidental violence are not in anyway restricted by S.613.

It is clear that cases of union strike violence which involve serious bodily injury or damage, and which are in excess of $2,500, are not incidental to picket line activity. They are, at the very least, vengeful and spiteful acts. Activity of this type should be covered by federal legislation for two reasons. First, though all states have laws against such action, state and local law enforcement agencies are often unable or unwilling to get involved in cases involving union violence. Placing these crimes under federal jurisdiction would provide employers with effective legal redress from union strike violence.

Second, vengeful acts of union strike activity which occur during the term of a strike not only force the employer to incur serious immediate costs, they also force him to include an estimation of losses through future vengeful acts into his estimation of his cost of disagreeing. Even though these vengeful acts may be occurring on a random and uncoordinated basis, they have the de facto effect of extorting the employer into surrendering to the union's demands. Thus they have a financial impact on the final contract settlement.

As we stated at the outset, all union activity which clearly affects the collective bargaining process should fall under federal jurisdiction. Since we have already demonstrated how major instances of strike violence can influence employers' bargaining behavior, we consider the exercise of federal jurisdiction over strike violence wholly appropriate. S. 613 would provide strikers who committed such violations with jail sentences ranging up to life and with up to $250,000 fines.

VII. The Enmons Decision and Collective Bargaining

As we have demonstrated, random but continuous instances of vengeful strike violence can amount to de facto extortion. It is, therefore, clear why the supporters of S.613 sought to attach the bill's provisions to an anti-extortion law, namely, the Hobbs Act, (18 U.S.C. 1951.)

The sponsors of S.613 had another more germane reason for directing the amendments of S.613 toward the Hobbs Act. (18 U.S.C. 1951). The Hobbs Act is the central federal anti-extortion statute. It provides that:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both. (18 U.S.C. 1951 section (a))

Where extortion is defined in section (b) as follows:

> The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

There has been a great deal of discussion before the Senate Criminal Law Subcommittee of the Judiciary Committee about the Supreme Court's interpretation of the definition of extortion, as contained in the Hobbs Act, which was expressed by the Supreme Court in U.S. vs. Enmons decision (410 US 396 1973). We do not wish to repeat the case history here, but we believe there was a serious error in the Court's reasoning.

In the Enmons case the court was asked to decide whether striking union members who engaged in coordinated strike violence with the expressed purpose of extorting their employer into acceding to the union's otherwise legitimate bargaining demands had committed extortion. As you know, the Court ruled that the definition of extortion in the Hobbs Act precluded that conclusion.

In its decision the Court focused on the definition of extortion in the Hobbs Act which requires that the use of violence to obtain property from another is only illegal if the actual or threatened use of that violence is itself "wrongful." The Court ruled that since the union members involved in the Enmons case had used violence to achieve a legitimate end, the use of that violence was not "wrongful." Speaking on the question of whether union strike violence is wrongful, the court stated,

> In that type of case there has been no 'wrongful' taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services. (410 US 400)

There is a fallacy in the Court's reasoning that is apparent to those familiar with the dynamics of negotiations and strike resolution. The court has assumed that the outcome of collective bargaining negotiations cannot be influenced by union violent extortionate behavior during strikes. But when we consider the effect extortionate strike violence would have on an employer's ability to disagree with the union's demands, quite a different bargaining model emerges.

We would like to return for a moment to our discussion of how vengeful strike violence affects the outcome of strike negotiations plagued by violence. Recall, if you will, that in the face of continuous violent activity, the employer had to build an estimation for future random violence into his cost of disagreeing. We submit that the same process of employer elevation of the employers' "cost of disagreeing" that occurs as the result of vengeful violence, occurs in an exaggerated form in the face of violent union strike extortion. Unions or union workers who engage in extortionate strike violence do so precisely because they wish to force the employer to factor the expectation of such violence into his collective bargaining decisions. Such union extortionate violence is, therefore, executed in a fashion which is designed to achieve the maximum impact on employer bargaining.

The point the court ignored in its decision and which we make here, is that extortionate strike violence can, and often does, force an employer to make larger contract concessions than he would otherwise have made had the conduct of the union's strike been peaceful. Therefore, contract concessions which arise out of extortionate strike negotiations contain a premium for strike violence to which the employees have no legitimate claim.

VIII. S.613 as a Response to the Enmons Decision

The sponsors of S.613 have recognized the danger of continuing to allow unions to engage in strike violence with the expressed intent of winning otherwise unobtainable collective bargaining concessions. They have, therefore, sought to bypass the labor extortion exemption which is currently contained in the Hobbs Act by virtue of the Supreme Court's Enmons decision. To achieve this end, they have moved to strike the word "wrongful" from its current place in the statute as a qualifier for the terms "actual or threatened force." We support this proposal as an appropriate means to bring union extortion under federal jurisdiction and, to thereby remove the incentive for union members to engage in violent, extortionate behavior.

IX. Arguments Against S.613

There have been two arguments voiced by the opponents of S.613 which we would like to briefly address.

The first argument raises the important question of whether the jurisdiction of S.613 has been too broadly defined. It is feared that the provisions of S.613 which would make strike violence involving over $2,500 in damage or major bodily injury a federal crime, could be construed to extend to areas of criminal activity beyond the labor arena. Though this is a valid concern, we submit that the legislative discussion and history which surrounds the bill to date would preclude such an application of S.613. We would, however, support a section in the bill which would more precisely define the scope of its provisions.

The second argument raises the equally valid concern as to whether the removal of the word "wrongful" could jeopardize the freedom of workers to engage in peaceful strikes. Those who voice this concern also argue that since strike activity could be construed as a legitimate form of extortion, the removal of the term "wrongful" from the definition of extortion could subject strikers to Hobbs Act penalties.

The sponsors of S.613 have moved to protect the rights of legitimate strikers by inserting the term "wrongful" as a modifier for the term "fear" in the Hobbs Act's extortion definition. Positioned in this way, it would preclude the application of the Hobbs Act to union members who used legitimate tactics to inspire "fear" in their employers. Thus peaceful strike activity would be protected.

X. Conclusion

When the federal government extended federal jurisdiction over the field of labor relations, it should have assumed responsibility for policing all aspects of the process it was creating. S.613 would provide for this proper extension of federal jurisdiction. It has, therefore, earned the support of the NAM. The NAM urges the Criminal Law Subcommittee to vote in support of S.613.

STATEMENT OF THE RAILWAY LABOR EXECUTIVES ASSOCIATION BEFORE THE SENATE SUBCOMMITTEE ON CRIMINAL JUSTICE ON S.613

My name is J. R. Snyder. I am National Legislative Director of United Transportation Union.

This statement on S.613 is being submitted on behalf of the Railway Labor Executives Association of which I am Chairman of the Safety Committee. The names of the constituent organizations are as follows:

- American Railway Supervisors Assn.
- American Train Dispatchers Assn.
- Brotherhood of Locomotive Engineers
- Brotherhood of Maintenance of Way Employes
- Brotherhood of Railroad Signalmen
- Brotherhood Railway Carmen of the United States and Canada
- Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
- Hotel & Restaurant Employes & Bartenders Int'l. Union
- Int'l. Assn. of Machinists and Aerospace Workers
- Int'l. Brotherhood of Boilermakers and Blacksmiths
- Int'l. Brotherhood of Electrical Workers
- Int'l. Brotherhood of Firemen & Oilers
- Int'l. Longshoremen's Association
- Int'l. Org. of Masters, Mates & Pilots of America
- National Marine Engineers' Beneficial Assn.
- Railroad Yardmasters of America
- Railway Employes Dept., AFL-CIO
- Sheet Metal Workers' Int'l. Assn.
- Seafarers Int'l. Union of North America
- Transport Workers Union of America
- United Transportation Union

RLEA is strongly opposed to S.613. The ulterior purpose of the legislation is apparent. The primary support for the legislation is the National Right to Work Committee. They are not seriously concerned about violence on the picket lines; rather, they seek another weapon to restrict workers from organizing and to seek better working conditions.

Strikes are not as common as some might suggest. In fact most labor disputes are settled without the necessity to resort to a work stoppage. It is estimated that approximately 95% of the labor disputes nationally are amicably resolved. When strikes do occur they are generally peaceful. No union, and certainly not railroad unions, will advocate any violence on the picket lines.

The Hobbs Act is not, and should not be, intended to interfere with exertion of peaceful economic pressures by a union through strikes to achieve legitimate labor objectives. For your Committee to vote otherwise would be a clear example of callous disregard for the workers of this country.

Most legislators were not even born when labor was the victim of brutality by the management barons in this country. In 1892 the Homestead steel strike resulted in many armed detectives and strikebreakers swooping upon workers who were resisting a large pay cut. In 1894, 3,400 special deputies were sworn in by the federal government to break the Pullman strike. These deputies were the source of much bloodshed. Interestingly, none of those violent acts by the detectives or deputies would be considered illegal under S.613.

This legislation is nothing more than a slap in the face to every working laborer in this country, and it should be resoundingly defeated.

LETTERS SUBMITTED FOR THE RECORD

Mrs. Emily Perry
Route 1, Box 183
Palestine, AR 72372

Honorable Charles Mc.C. Mathias
Chairman, Criminal Law Subcommittee
Senate Committee on the Judiciary
102 Russell Senate Office Building
Washington, DC 20510

Dear Senator Mathias:

I would like for the Criminal Law Subcommittee to know what my family and I went throw during a strike. Please put my letter in the record of the hearings on S. 613.

In 1978, AFL-CIO-Local 1106 at Sanyo, in Forrest City, Arkansas, went out onn strike, I stayed out 5 week. Then crossed the picket line (what they was asking was foolish.)

It started with threating phone calls. We called the law and thay said we would have to tape the calls. A depety sherif in the office wife work at Sanyo and a big union worker was told of the call. So thay quit saying any thang. Thay would ring the phone and hang up.

On Sunday night September 16th we had gone to bed. A car stoped in front of or house then started moving off slow. A shot went off and my husban jumped out of bed. By the time he could get thangs together (from a sound sleep) thay was gone. My son was out of his house trailor and in the yard by the time his father was out.

The law came out the next day but could not find anythang. A couple days later thay seen where buck shot had hit a post on the front porch. And look in line and seen where some had went in the wall. Thay dug out some of the lead.

At the time we was going throw all this we had a 3 month old baby in the hous. My son and his wife and baby stayed with us. We felt the trailor was unsafe for them to stay in.

We wasn't the only one's that went throw this.

One man was run off the road, was shot at, phone calls all night and day. His wife was threaten. She did not work at the plant. She was a house wife.

Also Barbara a girl that work with me house was shot at and a big picture window was shot out and also a front door. Thay also called her and told her thay had drawed a bead on her and her son going down the hi way and could blow there head off any time. Thay told her not to go to work are thy wood have to do it.

My husband was in the Air Force in W.W. II. He fought for my freadom and I thank every American should be able to do as thay wish as long as it is with in the law. When a group of people start telling you what to do and not do thay are trying to take away are freadom. When people can use the phon to call and threaten people lives come by night and shote up there homes then we are no moore free and safe in this country. We are like the other country we hear about. It seem so unreal to be happing in U.S.A. and it is all blamed on those in the union who take over.

My house was shot at. My famely had to sleep in shift. And the shirfs office was not any help. One of the depety wife work there and was out on strike.

I thank the United State Government should do something.

Emily Perry

Emily Perry

Allotta, Singer and Farley Co., L.P.A.
Attorneys and Counselors At Law
3450 W. Central Avenue
Suite 366
Toledo, Ohio 43606

January 12, 1982

Hon. Charles McC. Mathias, Jr.
United States Senator
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Mathias:

Our names are Joseph J. Allotta and Larry D. Farley, and our law firm, Allotta, Singer & Farley Co., L.P.A., serves as General Counsel to the North Central Ohio Building & Construction Trades Council. We are pleased to be asked to provide our point of view to supplement those already presented to the Subcommittee on Criminal Law of the Committee on the Judiciary, in your consideration of S. 613. We have read with great interest the comments made by the witnesses who have appeared before the Subcommittee. Many of these witnesses have attempted to paint a picture of pervasive violence in labor-management relations. These same witnesses have chosen to make emotional appeals on this issue rather than presenting rational and cohesive arguments to support their position. Such surrender to emotion was absent when Laurence Gold, Special Counsel for the AFL-CIO, addressed this Subcommittee and provided an excellent analysis of the present state of labor-management relations and the effect S. 613 would have on the Hobbs Act and the administration of justice on the local, state and federal levels.

We heartily agree with the arguments made by Mr. Gold and wish to expand on his statements from the perspective of attorneys who deal with the day-to-day situations which arise in labor-management relations.

S. 613 presupposes the need for change in the present system of regulation and administration of criminal conduct and labor-management relations. Such supposition is without foundation.

We have been involved in numerous labor disputes. Some could be termed as being very bitter. However, without exception, any problems which have arisen have been effectively handled by state and local officials. The need for federal involvement in an area which historically has been the province of local officials is quite simply unwarranted.

We represent labor organizations in the states of Ohio, Michigan and Indiana, and have been impressed with the committment, in most cases, of the local law enforcement officials in monitoring and controlling labor disputes. The cry of local police inaction made by representatives of the Associated Builders and Contractors, Inc., Associated General Contractors of America, and the National Right to Work Committee rings hollow when the true facts are known regarding the incidents they have stated.

We would be ignoring reality if we did not recognize that some labor disputes are not as peaceful as the parties would desire. When you are dealing with an individual's life and well-being and/or a company's existence, emotions sometimes overshadow reason and common sense. When reasonable minds do become clouded with the emotion of the moment and force or threats of force become embroiled in a labor dispute, it should not be the federal authorities who are called on to police the results of this situation. The Hobbs Act carefully sets forth the perimeter within which federal authority will be paramount. Those who wish to extend such authority would have the federal criminal power punish the "legitimate activity on the part of labor people or labor unions." United States v. Enmons, 410 U.S. 396, 404. The Court in Enmons clearly recognized that such activities should not be includable under the concept of extortion.

The very wording of S. 613 belies the statements of labor's foes that the amendment to the Hobbs Act would not be used to emcompass minor picket line altercations or scrimishes. The testimony of Messrs. Ross, Larson and Supica indicate the desire to integrate the federal criminal system in all so-called violent activity by union members. An emotional reaction of the moment which under most state and local statutes would be a misdemeanor would then become a felony and subject the miscreant to lengthy imprisonment, large financial punishment, not to mention the adverse affects on the individual's family. While we and the numerous labor organizations we represent in no way endorse violent behavior, we are realistic enough to acknowledge from experience and history itself that occasionally violence can and will occur. To subject a person to such sentences for an activity that, but for its occurrence in a labor dispute, would be a simple misdemeanor, is to punish an individual for his beliefs and associations rather than his improper activity. It cannot be over-emphasized that so-called labor violence involves isolated individual acts by the same individuals who are law abiding and responsible community supporters. The same realization has been made regarding countless activities which the Congress and Courts have seen fit to leave to the regulation and control of state and

Hon. Charles McC. Mathias, Jr.
United States Senator
January 12, 1982
Page 3

local governments. Such has been the case with incidents of labor violence. It has been our experience that at times, state and local officials take an overzealous attitude toward the policing and control of labor disputes. More often, we hear complaints of "overreaction" or "interference" by local enforcement agencies from our clients.

If the advocates of S. 613 truly desire more effective enforcement of improper conduct, they should look to their local officials to provide any (needed) changes. It is at the local level, where the effect of such conduct is felt, that the changes can be best accomplished. However, it is clear to us that S. 613 supporters are more concerned with punishing the individual for his support of the labor movement rather than for his conduct alone.

Thus, we feel S. 613 represents a harmful extension of federal authority, an infringement on the rights of the states, and a thinly veiled attempt to constrict the ability of the labor movement to advance the position of the working men and women of America. Therefore, we urge you not to enact S. 613 into law.

Respectfully submitted,

ALLOTTA, SINGER & FARLEY CO., L.P.A.

Joseph J Allotta
Joseph J. Allotta

Larry D. Farley
Larry D. Farley

JJA/LDF/bla

January 18, 1982

Honorable Charles McC. Mathias
Chairman, Criminal Law Subcommittee
Senate Committee on the Judiciary
162 Russell Senate Office Building
Washington, DC 20510

Dear Senator Mathias:

I request that this letter be placed in the written record supporting Senator Thurmond's bill, S. 613, the amendment to the Hobbs Anti-Extortion Act.

I firmly believe in the right to join or refrain from joining a labor union. As a result, my family and I have suffered the following occurences:

In 1978-79, I was employed by Anamax Mining Co. near Tucson, Arizona. Some of the company employees were members of the Teamsters union. When a strike was called, I refused to participate and knowingly crossed the picket lines. Because of this, snakes were thrown into my house and my auto brakes were tampered with--apparently by the strikers. There are witnesses who will attest to these and other incidents.

In 1980, I moved to Racine, Wisconsin, applied for a job and was accepted for employment by G & H Mfg. Co. of Kenosha.

At the time, G & H workers, represented by IAM Lodge 34, were on strike.

The hiring of replacement workers by G & H at that time had been approved by a Federal judge. All union harassment after that approval was in direct violation of two Federal court injunctions.

While crossing the picket lines at G & H, I was subjected to much verbal abuse by strikers, and on many occasions I and others had rocks and bottles hurled at us. Many workers had their car windows broken and their tires slashed while police were present with their backs turned. At least three men were beaten and hospitalized because of these illegal actions.

In December of 1980, a van owned by a fellow worker started on fire when he turned the ignition key. It was a gasoline bomb. Luckily he was not injured because the bomb was badly placed and failed to explode. It just burned.

I personally have been threatened with death at least 12 times, and there have been threats against my wife and two infant children.

I organized support among the replacement workers and have made the attempt to decertify the union at G & H.

In December of 1981, (after the union seemed to have lost the decertification election) the brakes of my truck were again tampered with, this time my family was with me and could have been badly hurt if the traffic circumstances had been different.

There is extensive documentation supporting the above mentioned incidents on file with the National Labor Relations Board in Milwaukee.

May have B.A.S.

I believe these incidents happened because the city administrator of Kenosha is also the father of the business representative of IAM Lodge 34. For many years he held the job his son now holds.

Thank you for the chance to tell my story.

Sincerely,

Bruce A. Schreiber

Bruce Schreiber,
2405 Romayne Avenue
Racine, WI 53404

P.S.

As of this date, damages to G & H property, as well as the property of their replacement workers, have exceeded an estimated $25,000.

January 18, 1982

Honorable Charles McC. Mathias
Chairman, Criminal Law Subcommittee
Senate Committee on the Judiciary
162 Russell Senate Office Building
Washington, DC 20510

Dear Senator Mathias:

I would like to submit this statement in support of S. 613, the Hobbs Act Amendment.

The International Union of Operating Engineers Local #649 in Peoria, Illinois, had contacted us about signing a "Highway and Heavy Construction" contract for the stockpiling and loading of coal on private property. The scope of this contract would not have covered the coal movements. We told them we did not feel the contract covered what we were doing and respectfully declined their invitation to sign. We then offered to negotiate a special contract for this work. We were told we would sign the "Highway and Heavy Construction" contract "OR ELSE." We were working for Corn Products International's Pekin branch at the time. Corn Products also had a building contract for construction being done on another portion of their property at this time. The Operating Engineers' Business Agent threatened to shut down the construction job if we were not forced to sign this "Highway and Heavy Construction" contract. Corn Products did, in fact, stop our operation for two days while their attorneys verified their position. The Corn Products' attorneys confirmed that the Operating Engineers union had no jurisdiction over the coal movement. We were then allowed to go back to work.

On the second day of resumed work, October 8, 1981, at approximately 11:50 a.m., a man was observed in the act of pouring liquid into our endloader. Danny Joe McQueen, a reputable member of Teamsters Local #627, was an eye-witness to the liquid addition and stopped his truck to shut the endloader engine off and to give chase to the person, known to him, who had added the liquid. This man was President of Operating Engineers Local #649, James Madson. We called the Pekin Police, had Mr. Madson arrested and booked on criminal damage to property. Thru testing the crime lab identified the liquid as muratic acid, which had been added to the crank case oil while the machine was running. The acid, of course, caused extensive damage to the engine, which took five weeks and $14,200.00 to repair. We do not know the extent or long-range effects on Mr. McQueen's lungs from breathing the acid fumes when he stopped to shut the endloader engine off in order to minimize the machine damage.

In order to continue our work for Corn Products, we had to rent another endloader for five weeks, at an expense of $7,000.00. Our trucks and endloader had not been allowed to work for the two days during the original intimidation (which Corn Products' attorneys settled) and half a day was lost on October 8, the day of the damage. October 9 we had to hire an outside machine, so the trucks would not lose work, at an expense of $400.00 for the day. Fortunately, we were able to locate and rent a replacement endloader during the day of October 9, and it was on the job from October 10 until our machine was repaired and returned. We figure the lost revenue of the endloader and trucks at approximately $3,200.00

The Operating Engineers have contacted the Teamsters and other local contractors to try to persuade us to drop the charges and with a request for Mr. McQueen to have a convenient lapse of memory as to whom he saw on October 8 at 11:50 a.m.

Mr. McQueen lives in Pekin, Illinois, in an apartment building which houses approximately twenty people. On the evening of October 12, 1981, two separate fires were set in the basement of that apartment building. Fortunately, the Pekin Fire Department and Arson Squad arrived on the scene before the fires had become serious. Damage was contained to the basement with some smoke throughout the building. The implication is obvious.

Currently, Mr. Madson is free and it seems the State's Attorney does not have the intestinal fortitude to bring him to Grand Jury. It seems the combined union membership in this area is quite a large voting block.

As of this date, Mr. McQueen's memory has not slipped and we have not dropped charges. But, our integrity will have no value if the case is not brought to court.

We appreciate your time spent reading this true account of union intimidation and violence. We sincerely hope Senate Bill 613 passes as it would be a major step to end this type of union activity.

Thank you.

Vernon Winzeler Mgr.

Vernon Winzeler, Manager
Brian-Dawn Trucking, Inc.
Box 164
Tremont, IL 61568

January 22 , 1982

Honorable Charles McC. Mathias
Chairman, Criminal Law Subcommittee
Senate Committee on the Judiciary
162 Russell Senate Office Building
Washington, DC 20510

Dear Senator Mathias:

Please insert this letter in the record supporting S. 613, the amendment to the Hobbs Act. I would like to tell you of some of my experiences with the union during the thirty years I worked as a machinist tool and die maker on the Hanford Atomic Project, from 1947 until I retired in 1977.

In 1948 there was an election and the Hanford Atomic Metal Trades Council (union) was voted in as the bargaining agency for crafts people. There has not been an election since.

I joined the union and became a shop steward. The heads of the unions started getting things for themselves rather than for those who they were representing. They would use the dues money to elect congressmen, senators, and presidents that we who paid these dues did not want elected. They turned down good things the employer offered, because they had not negotiated for them, thus preventing us from getting them. It got so bad a lot of us quit the union.

In the contract negotiations in 1966, the H.A.M.T.C. negotiated a contract calling for an agency shop. That is where you either join the union or pay an agency fee in the same amount as the dues required of union members. A few of the workers joined the union under force, and the rest of us paid the agency fee. An agency fee payer cannot attend union meetings and does not have any say in what he wants after paying this extortion fee. In these negotiations, the union traded the employer the raise in wages that the company had offered, for the agency shop. A few months later the H.A.M.T.C. went on strike to get the raise that they turned down to get the agency shop. The union members said if any went to work through the picket line, they would be fined. Those of us agency fee payers that the union could not scare went to work.

When the strike was over, the union people came back

continued . . .

doing everything they could do hinder those people who worked. It became necessary to check the equipment before we could use it, because they would leave chucks loose that would fly off if we started the machines before checking. The union members who struck would not speak to us but would call us all kinds of names as they talked back and forth. This went on for years while we continued to pay the agency fee.

In 1976, H.A.M.T.C. went on strike again. Agency payers and some of those forced to belong to the union worked. One young machinist who paid agency fee worked with me during the strike. When the union members returned, they would not let him eat in the lunch room or go into the locker room. They loosened chucks and grinding wheels where we worked, making it dangerous to work. We were forced either to belong to the union or pay agency fee, so some chose to sign the union cards. After this strike was over, many of those who signed these cards and went through the picket line were taken to court and fined; Some up to as high as ten thousand dollars ($10,000.00).

We had one wash basin to wash in. One of the union members each time would quit work very early and go to the wash basin and then hold it until the next came until they had all washed, then we could have it. They would walk by us and give us a shove as they went by.

One day I went into the jig bore room to get some tools. There a union member took the air hose and blew steel chips into my eyes. I had to go to a doctor to have them removed. The supervisor would not do anything about it as he was a member of the union. The manager would do nothing about it as he wanted to stay in good with the union. I figured if the supervisor and the manager would do nothing about it, it would be of no use to take it to the law enforcement officials. Later I wished I had but, of course, it was too late then. The patrol on the project belong to a union.

I had a gall bladder attack and had to have it removed. When I was able to return to work, the doctor sent a slip to my supervisor telling him I was not to do any heavy lifting, or pulling. When I got back, the shop steward was the supervisor as the regular one was on vacation. He put me to work on the largest milling machine in the shop where it was all heavy lifting and pulling. There was a small one right beside it not in use. I hurt myself that day and lost a week's work starting the next day.

The H.A.M.T.C. sued a lot of the people who were forced

continued . . .

to belong to them, because they worked during the strike. They were fined, and some had to pay hundreds of dollars while others had to pay up into the thousands of dollars.

Many of these union members built things for themselves using company time, material, and equipment, then took the things home. Many tools walked along with them as they went out the gate. I told the supervisor about it, and he said he could not do a thing about it since he was a union member and the union would black ball him.

All of the supervisors are union people. This is a government project, and the funds that come to operate it are from tax payers all over the United States of America. I wrote to senators from our state, and they would do nothing about it as they were living "high on the hog" in their offices, receiving money for their campaigns that had been extorted from workers in the form of dues or agency fees. Why should senators, congressmen, and presidents stop this blackmail and extortion when it helps them stay in office?

This is a government-run project, and people are paid with tax payers' money to collect the union dues or agency fees and turn this money over to the unions through payroll deduction. Notices go out the first of the month for those who do not have payroll deduction, and this has to be paid within fifteen days or they are terminated. Now this has to be paid in advance for the month. The notices come out from the union.

I hope this information will be helpful. Based on my experience, this country needs S. 613 to restore equal treatment in the law.

Sincerely,

Howard E. Rew

Howard E. Rew
1405 Cottonwood
Richland, Washington 99352

ADDITIONAL SUBMISSIONS FOR THE RECORD

AFFIDAVITS

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al., Defendants.	NO. AFFIDAVIT OF CHARLES J. FELTON

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

CHARLES J. FELTON, being first duly sworn, on oath deposes and says:

1. I am labor foreman for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 21, 1980, I observed a truck belonging to Associated Sand & Gravel carrying precast concrete manholes was proceeding along Arnold Street in Aberdeen to deliver the manholes to our job site. A pick-up truck driven by a blond-haired man cut in front of the truck, creeping along at an extremely slow speed to obstruct the truck. When the truck reached the job site, the blond-haired man took pictures of the driver with a movie camera. See Photograph "B" attached.

3. On August 21, 1980, at approximately 6:45 p.m., I went to the Pourhouse Tavern on 506 East Wishkah in Aberdeen with Terry Heath and Chris Reiser. We were afraid to take the Company pick-up in case it gave our presence away, so we took Terry's car.

4. While we were playing pool, a blond-haired man, approximately 25 years old whom I had seen on the picket line almost every day entered the bar accompanied by a woman and another man. They sat down at a nearby table.

5. Terry told me that the blond-haired man gave the other man a card and that he went to make a phone call. Terry said to me that we'd better get out of there and I agreed with him. Suddenly a large group of men came in the front door. I saw Chris and Terry take several steps toward the back door, and then a large group of men came in the back door as well. I stayed put.

6. I saw Chris take off at a dead run for the back door. Meanwhile, four or five men were holding Terry at the back door. Chris ran into the back of Terry and then a group of men grabbed Chris and started hitting him. An oriental man, a man with a beard and a third man grabbed me. Two of them held me while the oriental man pushed me against the wall.

7. A man about 6'4" in height and weighing approximately 300 pounds, with red curly hair, then asked me "do you work at Felton?" I answered "yes" and he responded "you don't anymore." He then said "you son of a bitch, I'm going to kill you." He took a chair and broke it over the pool table, and threatened to hit me with it. Then another man swung at my head with a pool stick. I ducked, and the pool stick struck my shoulders. Then the large man with red curly hair punched me in the face as two others held me against the wall. I said I would not go to work anymore. The large man with red curly hair repeated, "if you go

to work tomorrow, I'm going to kill you." The oriental man and the blond-haired man said the same thing.

8. I broke loose and ran out the front door. I saw a group of men kicking Terry's car. Terry threw his car into reverse, then forward. He picked me up at the end of the alley and we immediately went to the police station.

9. I was very shook up, and my face was bleeding from various bruises.

Charles J. Felton
Charles J. Felton

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenson
NOTARY PUBLIC in and for the State of Washington, residing at
916 N. Jeffries
Aberdeen, Wa.

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
________________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 252, et al., Defendants.	)	NO. 73958 AFFIDAVIT OF EDDIE RICHARD GIRARD

STATE OF WASHINGTON)
) ss:
County of Grays Harbor)

I, Eddie Richard Girard, after being duly sworn, state:

I picketed during the week of August 18, 1980 for Laborers Local 374 at the shop of Felton Construction Company, at Newell and Heron Streets.

I have read the affidavit of Edward A. Potter, and in particular paragraph 3 on page 2 of that affidavit. I witnessed the events described there. The truth is not as described in Potter's affidavit.

The driver was delivering a backhoe to Felton. He stopped his truck about one hundred yards up the road and away from the picket line. He walked down to where I was with the Teamster picket. He saw our signs and asked us if we were picketing. We said we were. He said something like, "Well, I ain't going to cross the line. I might take the trailer back." Kenny, the Teamster picket, and I offered to get ahold of a union business agent to see if we could help the driver out and get him unloaded without having to cross the line. I tried to reach an agent on my CB but was unable to do so. Kenny then drove the driver to a telephone so that he could call his main office for instructions.

Not long afterwards, Clancy Purdle showed up at the truck up the road. Around the same time, a man came out from Felton wanting to know where the driver of the truck was.

Kenny then drove up without the driver. He said that he dropped the driver off around the back way to Felton and the driver went inside. Later, I saw the driver walk out of Felton, get in his truck, drive it around near the back of Felton, and leave the backhoe there.

The driver did not cross our picket line for the reason, as he stated to me, that he didn't want to. In no way did we block his way or intimidate him. I do not know if he ever talked with Clancy Purdle. However, he did tell us of his intention not to cross our line, before Purdle arrived.

There have been no occasions during the week of August 18, 1980 where the pickets have obstructed anyone entering or leaving the Felton shop, or threatened anyone in any way.

A few people have refused to cross the picket line

----

when they saw our picket signs and we asked them to honor the line. That is one of the purposes of having a picket line.

____
Eddie Richard Girard

SUBSCRIBED and SWORN to before me this ____ day of August, 1980.

____
NOTARY PUBLIC in and for the
State of Washington, residing
at ______________________.

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 26 1980
MARGARET J. BINGHAM, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF
JAMES H. GRAHAM

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

JAMES H. GRAHAM, being first duly sworn, on oath deposes and says:

1. I am project engineer for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 18, 1980, I observed up to 30 pickets impeding access to our work site at F Street and McKinley Avenue.

3. On August 19, 1980, I observed pickets generally harassing workers at the work site. The pickets yelled "scabs" at the workers.

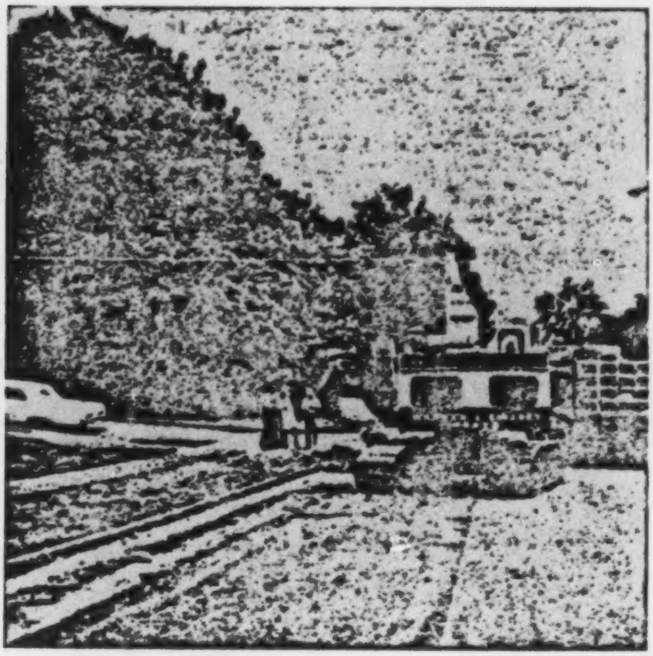
4. On August 20, 1980, I was supervising work at a job site at the intersection of E Street and McKinley Avenue, where we were fixing a broken water main. As indicated in picture "A" attached, there were about six pickets standing right at the edge

of the ditch. They were harassing the workers in the ditch. We called the police, who made them get back on the sidewalk.

James H. Graham
James H. Graham

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison
NOTARY PUBLIC in and for the State of Washington, residing at 916 N. Jeffries
Aberdeen, Wa.



AFFIDAVIT

State of Washington }
County of Grays Harbor }

I, Kelly Grubbs, after having been duly sworn, state:

I am a business agent for Laborers Local Union No. 374. Since the picket line at Felton Construction's shop and jobsite in Aberdeen started on August 18, 1980, I have been responsible for supervising the Laborers picket line. I have been out at the lines at least three times a day to check on the conduct of the picketing and make sure everything is being done peacefully and properly. I am unaware of any incidents or problems on the lines involving Laborers pickets.

page 2

I have distributed "Picket Instructions" to the pickets and told them not to block traffic, or in any way interfere with operations. To my knowledge all of these instructions have been followed.

DATED this 25th day of August, 1980.

Kelly Grubbs
KELLY GRUBBS

SUBSCRIBED and SWORN to before me this 25th day of August, 1980.

NOTARY PUBLIC
Residing in
Montana

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 2[illegible] 1980
MARGARET J. BINGHAM, County Clerk
______________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF
TERRY L. HEATH

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

TERRY L. HEATH, being first duly sworn, on oath deposes and says:

1. I am a laborer for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 21, 1980 at approximately 6:45 p.m., I went to the Pourhouse Tavern at 506 East Wishkah in Aberdeen with Chris Reiser and Charlie Felton. As I bought a pitcher of beer, the other people in the bar left. As I was playing pool with Chris and Charlie, a blond-haired man who I had seen on the picket line entered the bar with a woman and another man. They sat down at a table. I saw the blond-haired man give the other man a card, and he went to make a phone call. Fearing trouble, we decided to leave the bar. We stood up and turned around and 15 or 25 men

were standing in front of us. We then headed for the back door. I got to the edge of the pool table and a man with blue tinted glasses stepped in front and asked me where I was going. I said "I'm going home." He said "where do you live?" and I answered, "Tacoma." He responded threateningly, "you're driving all the way there tonight, aren't you?"

3. Another man, about 5'8" with dark hair, 46 to 50 years old, grabbed me and asked me if I worked for Felton. I answered, "well, I don't after this."

4. I heard a noise and turned around. A big man, about 6'4" with red, curly hair and a beard, picked up a chair and broke it over the pool table. I saw him threaten Charlie with it. Then the man with the dark hair grabbed me and turned me around. He called me a "scab motherfucker." He then tried to punch me but I ducked. He kept pushing me back and swinging at me. One punch hit the left side of my head and another hit my left rib cage. I turned and ran around the pool table. I was then surrounded by five or six men.

5. The bartender busted through the group yelling "take it outside." Then the man with dark hair said to me "spell out d-e-a-d." I spelled out "d-e-a-d," and he responded "if you show up for work tomorrow, you will be dead by tomorrow night."

6. The man with the blue glasses then grabbed me and threw me out the back door. I ran to my car and got in. The man with the blue glasses tried to open the opposite door and I threw the car in reverse. He came around to the driver's side and tried to kick in the window. He repeated that "if you show up for work tomorrow, you'll be dead." I put the car in low, floored the gas pedal, and came out the alley where I picked up Charlie.

7. Then a small yellow pick-up with the blond-haired man driving and the man with the blue tinted glasses in the rear

pulled up alongside. They started hollering, "get out of town or else."

8. I drove straight to the police station, where I filed a complaint.

Terry L. Heath

Terry L. Heath

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison

NOTARY PUBLIC in and for the State of Washington, residing at 916 N. Jeffries Aberdeen, Wa.

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF WILLIAM E. KEESLER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

WILLIAM E. KEESLER, being first duly sworn, on oath deposes and says:

1. I am truck foreman for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 13, 1980, at about 5:30 p.m., I was driving one of three Company trucks to Interstate Asphalt Company to pick up a load of asphalt. My truck and another truck entered Interstate Asphalt, but before the third truck could get in, several persons backed cars across the street so that the third truck could not enter. We called the police, who ordered the cars to back away. When I pulled my truck onto the scales at Interstate Asphalt, I stepped out of the truck to get a weight ticket for the load. A man named Brooks, who is a member of the Teamsters

Union, came up to me and yelled "you scab son-of-a-bitch, I'll kill you." I got back in my truck and drove away.

3. On August 19, 1980, I was driving down F Street in Aberdeen, and stopped at a light at Market Street. A man in his early 20's ran in back of the truck and painted "scab" on the tailgate. We filed a complaint with the police.

4. On August 21, 1980, at a job site at F Street and Second Avenue, I was waiting for a load. A heavyset man in his late 40's wearing a blue hardhat came up to me and said "you'll be lucky if you wake up in the morning before your house burns down."

William E. Keesler
William E. Keesler

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison
NOTARY PUBLIC in and for the State of Washington, residing at
916 N. Jeffries
Aberdeen, Wa.

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF DONALD A. NEAL

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

DONALD A. NEAL, being first duly sworn, on oath deposes and says:

1. I am project engineer for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 18, 1980, at approximately 8:45 a.m., I was supervising a project at job site at the intersection of F Street and McKinley Avenue. Approximately 30 men marched up to the job site, led by Bob Pittinger, business agent for Operating Engineers Local 302. He said with a smirk on his face, "we're just up here hoping we can learn something." They stood by and harassed the concrete clean-up crew for the entire day. They repeatedly shouted "scab" and made the crew quite nervous. Four or five of the men came up to Brent Majors, a laborer working at

the job site, and took a picture of him. He asked what the picture was for, and they responded "the picture is so that the doctors will know how to put you back together afterward."

3. On August 20, 1980, I was personally present during the incident described in James A. Graham's affidavit. On that date, I took a picture in the vicinity of the job site. The picture was taken with a Polaroid camera, a copy of which is attached as "Photograph B." The picture truly and accurately portrays the conditions as they existed at the time the photograph was taken.

4. On August 21, 1980, I was personally present during the incident described in Charles Felton's affidavit. I took the picture in the vicinity of the job site, with a Polaroid camera. A copy of the photograph is attached as "Photograph A." The picture truly and accurately portrays the conditions as they existed at the time the photograph was taken.

5. On August 21, 1980, at about 7:00 a.m., two laborers, Charles Gross and Mike Peoples, came to me to quit their jobs. Charles Gross told me that he and his wife had been followed the night before, and that he observed several persons watching their motel room all night. Mike Peoples said that he could not put up with it any longer, because "it's not worth it." They left the state to stay temporarily in Montana.

6. On the morning of August 22, 1980, Jack Middling and Joe Presto, Jr., two employees of Felton Construction Company, came into my office to inform me that they were quitting. I asked why, and they explained that on the previous evening they were eating at the Nordic Inn in Aberdeen. They were suddenly surrounded by a group of approximately 20 men. Some of the group dumped beer on their heads, while others stated that if they worked for Felton again, they would be "packed out on a slab."

7. On August 22, 1980, at about 8:00 p.m., I was traveling east on Olympia Highway heading out of Aberdeen. Approximately one mile from town, a red Toyota with three men in it drove up to the side of my car. The three men were drinking beer, and one made an obscene gesture to me. The red Toyota then pulled in front of my vehicle, and a blue El Camino quickly pulled alongside. The blue El Camino had two men in it, and one made an obscene gesture to me. He was partially balding with sandy-colored hair, about 30 to 35 years of age. The Toyota, which was still in front of my vehicle, at this point tried to force my vehicle to pull to a stop. I managed to swerve around the two vehicles, and called for help on my Citizen's Band radio. I was swerving all over the road to keep them behind me. They chased me, with speeds reaching approximately 100 miles per hour. Suddenly, after I received responses on my radio indicating help was coming, the two vehicles pulled away and disappeared. I promptly filed a complaint with the county sheriff regarding the incident.

8. Later that evening, between 8:30 and 10:00 p.m., the blue El Camino and a gray pick-up drove by my house numerous times. At 10:00 p.m. our phone went dead. My wife by this time was so terrified that we had to leave the house to spend the night at the house of relatives elsewhere in town.

9. If defendants are not restrained from continuing the physical attacks on our employees, the harassment, and the physical obstruction of our facilities and job sites, plaintiff will not be able to obtain the supplies and materials necessary to continue to operate, nor will plaintiff have the necessary employees to conduct its operations. Because of this, plaintiff will not be able to fulfill its contracts, and, even more

serious, may lose present and prospective customers, as well as the goodwill of its present customers.

10. The conduct of defendants is causing grave danger to plaintiff's employees and to the public at large in public meeting places and on public highways.

11. I believe that defendants' improper conduct described in the Complaint and this Affidavit will continue until such time as restrained by the Court.

Donald A. Neal
Donald A. Neal

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison
NOTARY PUBLIC in and for the State of Washington, residing at
916 N. Jeffries
Aberdeen, Wa.

FILED
IN THE OFFICE OF
COUNTY CLERK. Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
_______________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al., Defendants.	NO. AFFIDAVIT OF EDWARD A. POTTER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

EDWARD A. POTTER, being first duly sworn, on oath deposes and says:

1. I am Equipment Superintendent for Felton Construction Co. (the "Company"), and have personal knowledge of the facts stated herein.

2. On August 12, 1980, two trucks belonging to Associated Sand & Gravel arrived to make deliveries at the Company. The drivers were threatened by pickets who told them that they would have the "hell beat out of them," that they would be followed back to Seattle, and their plant would be shut down, if they tried to make the deliveries. The drivers, who as a result refused to make the deliveries, were followed out of town by pickets. They unhooked their trailers at Satsop. The next

morning, on August 13, 1980, different drivers came down to pick up the trailers in order to make the deliveries. One of the drivers told me later that as he pulled away with his trailer, he discovered that his brake air line had been slashed. He had to wait several hours for a repair truck to come to replace the air hose.

3. On August 19, 1980, T&T Trucking arrived to deliver a new 300H backhoe. The driver pulled up at the intersection of Heron Street and Newell Street, where he was confronted by Clancy Purdle, business agent for Teamsters Local 252. Purdle told the driver that he would not let him unload, and told him not to cross the picket line. The driver called his supervisor, who told him to unload the backhoe there in the street. The driver then disappeared, and I went looking for him. I found him in a car with Clancy Purdle and Bob Pittinger, business agent for Operating Engineers Local 302. Purdle and Pittinger were intimidating the driver. I then called Don Thompson, owner of T&T Trucking. I got permission from Thompson to unload the vehicle myself, but the driver finally unloaded the backhoe in the street, rather than in our yard, after a two and a half hour delay.

4. On August 20, 1980, at approximately 5:30 p.m., I received a phone call from Whiting Transportation Company, which was hauling a load of PVC pipe from a supplier, Johns-Manville. The caller stated that he had a load of pipe which his driver had to leave at Dan McGraw Trucking because his way had been obstructed by pickets. I then called Nor-Pac Trucking in Aberdeen and spoke with their dispatcher, Ted Raykowski, regarding their availability to pick up the trailer. He agreed to do it, and we went together to get the trailer. After picking up the trailer, I drove my pick-up, followed by Ted Raykowski driving the

trailer. A pick-up, Washington license No. PL3222, registered to Jerry Hendrickson, suddenly came alongside and tried to force the trailer-truck off the road by cutting it off. When we reached our yard, the pickets tried to block the entrance, yelling "dirty scab." The pickets yelled to Raykowski that "we know you're from Aberdeen, we'll find out who you are."

5. On August 20, 1980, a driver for Irving Trucking of Shelby, Montana, was told not to return by pickets after he unloaded. The driver had to deliver a second load, but was so frightened that he would not return until 8:00 p.m. that evening, after the pickets had left.

6. The next morning, on August 21, 1980, pickets arrived at Raykowski's office, and threatened him with damage to his trucks. They threatened to slash the trucks' tires and air lines, and threatened other harm. Raykowski then called me and related the substance of the threats. Raykowski said he couldn't take any chances with his equipment, so he would not haul anymore loads for Felton Construction Company.

7. On August 21, 1980, unidentified persons pulled the plug of the oil pan of the truck belonging to Ken Utheim, an independent trucker. The truck was parked at the shop site. On the same date, unidentified persons poured sugar into the fuel tank of a truck belonging to Joel Bordeaux, an independent contractor. The truck was immobilized.

8. I and my wife have been receiving harassing telephone calls; the caller breathes heavily into the phone but says nothing. On August 20, 1980 we received four such calls. On August 21 we received nine such calls, and on August 22, three more such calls.• I requested that the telephone company attempt to trace the calls, but my request was denied.

9. Because of harassment and intimidation, and in some cases serious physical violence, so many of our employees have quit that our operations have been severely curtailed.

10. I believe that unless the Court provides appropriate injunctive relief to halt defendants' improper conduct, the Company will suffer irreparable harm, not to mention the physical and mental that will continue to be inflicted on the Company's employees and their families.

Edward A. Potter
Edward A. Potter

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison
NOTARY PUBLIC in and for the State of Washington, residing at
916 N Jeffries
aberdeen Wa

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,)
)
Plaintiff,) NO. 73958
)
vs.) AFFIDAVIT OF
) TED RAKOSKI
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, CHAUFFEURS, WARE-)
HOUSEMEN & HELPERS OF)
AMERICA, LOCAL 252; et al.,)
)
Defendants.)

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

TED RAKOSKI, being first duly sworn, on oath deposes and says:

1. I am Freight Manager for Nor-Pac Trucking in Aberdeen, Washington, and have personal knowledge of the facts stated herein.

2. On August 20, 1980, during the afternoon, I received a telephone call from Ed Potter at Felton Construction Company. Ed told me that a trailer load of PVC pipe had been left at Dan McGraw Trucking in South Aberdeen because the driver had refused to cross the picket line at Felton Construction Company. Ed asked me if I would pick up the load and bring it to the Felton Construction office. I told him that as a supervisor, I would take the trailer across the picket line.

3. Ed Potter and I went to McGraw's yard and I hooked up the trailer to the tractor. Suddenly a light-colored, late model pick-up with two men in it drove into the yard. The

driver of the pick-up was tall, well dressed, with blond hair, about 5'11" in height. The passenger was short, about 5'8", chunky, with a mustache, beard, and dark hair, and was about 35 years of age. The driver asked me if I was union, and I said no, that I was a supervisor. He asked me if I lived in Aberdeen, and I said no. He then asked me if I was taking the trailer to Felton Construction for delivery, and I responded that I was.

4. I got in the tractor to drive away, but the pick-up blocked my path, so I had to swing around it. Then the pick-up rushed ahead of me, cutting in between Ed Potter's pick-up and my tractor-trailer. The entire way to Felton Construction, the pick-up kept slowing down in front of me, almost to a stop, then would speed up only to slow down again, almost to a stop. The pick-up repeated this conduct all the way to Felton's yard.

5. As we approached Felton's yard, the driver of the pick-up motioned to the pickets to block my path, but I managed to enter the yard before they could do so.

6. The next morning, on August 21, 1980, at approximately 10:00 a.m. a man driving a Volkswagen came to our office. He was a large, heavyset man with a beard, a mustache and dark hair. He talked with Red Bowen, the owner of our company. Later, Mr. Bowen called me in to tell me that he did not want to make any more deliveries to Felton Construction, and that the man he had talked with that morning, who said he was a union representative from Tacoma, caused Red to fear that our equipment might suffer harm if we continued to service Felton Construction Company. Agreeing with Red, I then called Ed Potter at Felton Construction Company to relate to him the details of the union representative's visit. I told Ed Potter that we would not deliver to Felton Construction anymore, because we did not want to risk

possible damage to our equipment.

Ted Rakoski
TED RAKOSKI

SUBSCRIBED AND SWORN to before me this 27th day of August, 1980.

Kevin J Gearin
NOTARY PUBLIC in and for the
State of Washington residing
at Seattle

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 28 1980
MARGARET J. BINGHAM, County Clerk
_______________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY;
Plaintiff,
vs.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO. 73958

AFFIDAVIT OF
CRAIG RAKOSKI

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

CRAIG RAKOSKI, being first duly sworn on oath deposes and says:

1. I am an employee for Felton Construction Company, and have personal knowledge of the facts stated herein.

2. On August 26, 1980, at approximately 3:45 p.m., I was operating a concrete cutter at a job site at the intersection of 'F' Street and Arnold Street in Aberdeen, Washington. At that point, Chuck Witt, Business Agent for Laborers Local 374, drove up in a two-door white Ford LTD, Washington license plate number TDK 320.

3. He rolled down his window and asked me, "Where do you go at night?" I answered, "Felton Construction". He asked again, "Where do you go at night?" I said, "Oh, I go home." I then

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asked him, "Well, what do you want to know for?" He replied, "I am going to kill you."

Craig Rakoski
CRAIG RAKOSKI

SUBSCRIBED AND SWORN to before me this 27th day of August, 1980.

Kevin J. Gearin
NOTARY PUBLIC in and for the
State of Washington residing
at Seattle

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
____________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF
RAYMOND C. RAMSEY

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

RAYMOND C. RAMSEY, being first duly sworn, on oath deposes and says:

1. I am a laborer for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. On August 21, 1980, at 6:15 p.m., my wife and I went to King Arthur's Restaurant in Aberdeen. While sitting at our table, I saw four or five men come in the back door. They sat down at a nearby table, and I heard one say to the other, "there's one." He looked at me when he said it.

3. The man then turned to me and repeated several times, "scab, do you know how to spell d-e-a-d?" Then a man approximately 6' tall with blond hair and a mustache, weighing approximately 165 pounds, wearing glasses, approached our table, and

threatened myself, my wife and our house. He grabbed the hamburger out of my hand. As I arose, he grabbed me. I pushed him away, but I was then surrounded and punched by 12 to 15 men. Two or three men seized each of my arms, and pushed me up against the counter. The owner stepped in, and yelled at them to stop. One of them told him to go to hell and to get away. The owner's wife, a waitress, went to call the police, but one of the group yelled to her to keep her hands away from the phone. The man who grabbed my hamburger said to me "if you go to work tomorrow, we will personally find you and twist your head off and shit in the hole." He kept yelling at me, "are you going to work tomorrow?" Then someone yelled that the police were coming, and the group hastily left the restaurant.

4. When my wife and I went out to our car, we found that the front and rear tires on the driver's side had been punctured with a sharp instrument. I had to buy two new tires the next day.

Ray Ramsey
Raymond C. Ramsey

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison
NOTARY PUBLIC in and for the State of Washington, residing at
916 N. Jeffries
Aberdeen Wa

FILED
IN THE OFFICE OF
COUNTY CLERK, Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
———————— DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al., Defendants.	NO. AFFIDAVIT OF CHRISTOPHER M. REISER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

CHRISTOPHER M. REISER, being first duly sworn, on oath deposes and says:

1. I am a laborer for Felton Construction Co., and have personal knowledge of the facts stated herein.

2. At approximately 6:45 p.m. on August 21, 1980, I went to the Pourhouse Tavern on 506 East Wishkah in Aberdeen, accompanied by Charlie Felton and Terry Heath. When we entered the bar, the few people in the bar left. We were playing pool in back, when suddenly men started pouring in the front door of the bar. One of the group was a blond-haired male who I saw on the picket line almost every day. He had caused considerable trouble on the job site. We decided to end the pool game and leave by the back

door. As we turned to go out the back door, other men started pouring in the back door.

3. One man with a thin face and blue tinted glasses said "are you going somewhere?" Then a big, burly "biker-type" said "do you work for Felton?" I answered yes, and he took a punch at me. I ducked and his punch hit the side of my head. I dodged around the pool table to get away from him and rushed for the back door. Then the man with the blue glasses and others blocked the door. They and others grabbed me and started beating me on my face. They pinned me to the ground and kicked me repeatedly.

4. Then one of the group said to me "are you going to work tomorrow?" I hesitated in answering, and several of the group pulled my hair and punched me. The man repeated his question, and I said "hell no, I am looking for another job ~~not going to work~~." He then said "you'd better get the hell out of here or we'll kill you."

5. I then fled from the bar, ran down the street, and hid under a house until I saw them leave the bar. I went to a neighbor's house, where I laid on the bed trembling for a long time.

6. I did not go to work the next day.

Christopher M. Reiser

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jemison
NOTARY PUBLIC in and for the State
of Washington, residing at
916 N. Jeffries Aberdeen, Wa.

FILED
IN THE OFFICE OF
COUNTY CLERK Grays Harbor Co., Wash.
AUG 25 1980
MARGARET J. BINGHAM, County Clerk
______________ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

FELTON CONSTRUCTION COMPANY,
Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 252; et al.,
Defendants.

NO.

AFFIDAVIT OF
JAMES H. SIMON

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

JAMES H. SIMON, being first duly sworn, on oath deposes and says:

1. I am one of the attorneys for plaintiff, and make this affidavit to comply with Civil Rule 65(b).

2. I certify to the Court that at approximately 3:30 p.m. on August 23, 1980, I attempted to reach John Burns, of Hafer, Cassidy & Price, Seattle, attorneys for defendant Laborers International Union, Local 374. I spoke with another attorney at the firm, Nick Wagner, who said that John Burns had gone home and that he did not have a home telephone number for Mr. Burns. I therefore left a message for Mr. Burns, detailing plaintiff's intention to seek a temporary restraining order on Monday morning, August 25, 1980. I then attempted to obtain a home

telephone number for Mr. Burns through telephone information, but was unsuccessful.

3. On the same afternoon, at approximately 4:00 p.m., I attempted to contact Dave Condon of Griffin & Enslow, Tacoma, attorneys for International Union of Operating Engineers, Local 302. No one answered at his office, and I could not obtain his home telephone number as it is unlisted. I tried his office number again on August 24, 1980 at 11:30 a.m., but got no answer.

4. Both Edward Potter of Felton Construction Company and I telephoned the business office of Teamsters Local 252 at various times on August 23, 1980 in an effort to obtain the name and telephone number of counsel for the union. Neither of us could get an answer to our calls.

5. On August 24, 1980, I obtained information indicating that George Davies might be the attorney for Teamsters Local 252. I tried his home and office telephone numbers at 11:00 a.m. and 4:00 p.m., but received no answer at either place.

6. I was unable to give longer notice to defendants' counsel because of the immediate and irreparable injury and damage presently being incurred by plaintiff, as more fully set forth in the verified Complaint and affidavits herein.

James H. Simon

James H. Simon

SUBSCRIBED AND SWORN to before me this 25th day of August, 1980.

James C. Jenison

NOTARY PUBLIC in and for the State of Washington, residing at

916 N. Jeffries
Aberdeen, Wa.

AFFIDAVIT

State of Washington }
County of Grays Harbor)

I, Charles A. Witt, after being duly sworn, state:

1. I am the Business Manager of Laborers Local Union No. 374.

2. On Monday, August 18, 1980, Local 374 started picket activity against Felton Construction Company at its shop in Aberdeen and at a jobsite in Aberdeen where Felton is performing work. Local 374 was not engaged, nor were its members, in any ~~such~~ picket activities against Felton before that date.

3. My business agent, Kelly Grubbs, and I have supervised picketing at Felton. One person has been picketing at Felton's

C.A.W.

page 2

shop, and generally two, and occasionally three, at the jobsite. We distributed to all pickets the attached "Picket Instructions" (Exhibit "A"). We emphasized in particular to each picket points 4 and 5, about not talking to anyone and not interfering with people entering or leaving the shop or job. In addition, Kelly and I told the pickets not to get in the way of any equipment, or to block any vehicle. I have visited the pickets at least once every day, and Kelly at least three times every day I have not heard of any incident at the line involving our pickets doing anything improper.

page 3

DATED this 25th day of August, 1980.

Charles A. Witt

CHARLES A. WITT

SUBSCRIBED and SWORN to before me this
25th day of August, 1980.

NOTARY PUBLIC in and for
the State of Washington
residing at Montesano

PICKET INSTRUCTIONS

You are to picket [name of prime contractor] at [address or description of job site]. You must follow these rules:

1. Before picketing, check for dual gates. If you find dual gates, call the Business Manager before picketing.

2. If you do not find dual gates, picket at the main entrance to the job.

3. If dual gates are set up after you start picketing, immediately contact the Business Manager.

4. [redacted]

5. [redacted]

6. If [prime contractor] leaves the job site, cease picketing. [illegible] again whenever [prime contractor] returns to [illegible]

International Brotherhood of
Any Work We Can Get, Local 1

Business Manager

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,

Plaintiff,

v.

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, all of its members, and the following officers and/or agents of that labor organization, individually and in their official capacities:

Its President (whose name is presently unknown);
Charles A. Witt, Business Manager;
Kelly Grubbs, Business Agent;
Its picketing or demonstration coordinators or organizers (whose names are presently unknown);
Its agents or employees who were or are involved in labor disputes, picketing or demonstrations involving plaintiff (whose names are presently unknown);

_et al._,

Defendants.

No. 74189

AFFIDAVIT OF
GALE E. BALDERSON

STATE OF WASHINGTON)
: ss
COUNTY OF KING)

GALE E. BALDERSON, being first duly sworn on oath deposes and says:

1. I am a foreman for Universal Utility Contractors, Inc. ("Universal"), and I have personal knowledge of the facts stated herein.

2. I have been working for Universal for about one month. I have been working for the company in the Aberdeen/Hoquim area. Almost every day I have seen pickets on the Universal jobs in the Aberdeen area and at the Aberdeen job yard. The picket signs

indicated that the picketers were demonstrating on behalf of the laborers union and the operators union. I have also seen teamster pickets demonstrating against Friend and Riccilo Trucking Company, which was supplying Universal with sand and gravel products for the Universal projects.

3. At about 7:00 a.m. on October 10, 1980, as I was leaving the Universal job yard in Aberdeen to go to the Hoquim project, I came out of the yard and was met by a mob of 100 or more people, who were blocking the street. Thirty or more were standing right in front of my truck and a couple of them put their hands on the front of the truck to try and prevent me from driving ahead. The people were shouting and swearing at me and preventing me from driving ahead. When I saw that I couldn't drive ahead, I started to back up. At that time people started throwing rocks at the truck. The rocks were anywhere from two inches to six inches in diameter. One of the rocks struck the windshield on the driver side, right in front of my face, shattering it. The glass from the windshield was scattered inside the truck. One of the demonstrators hung on the side of the truck and yell and swore at me through the open window, telling me to get out of the truck and that he would "fix" me. I backed up and turned around and headed for the yard, at which time they started hitting the back of my truck with rocks.

4. I drove back into the yard and parked the truck. When I got out of the truck I had to dodge a barrage of rocks coming in over the fence. Many of the people were swearing, using four-letter words, and calling me a scab.

5. The police had arrived about five or ten minutes after the Universal supervisor called them. The first four or five police officers who were there indicated to us that they were concerned about the "odds" since there were a couple of hundred

demonstrators and very few police officers. They indicated they were waiting for more help to arrive.

6. Some of the people who were demonstrating got fairly close to me and told me that I should take a good close look at their face since I was going to see them again. This was expressed in a threatening manner.

7. It probably took about one-half hour for the police to disburse the crowd. The crowd was continuing to yell and demonstrate all during this time.

8. I saw someone on the corner handing out leaflets. I didn't get a leaflet from her. Later I saw a paper which I presume was the same thing she was handing out. I can't recall exactly what it said, but it indicated that the demonstrators were doing this on behalf of the unions or to support the unions. I think it was the laborers, operators and teamsters.

9. I am not willing to continue working on the job unless the situation is under control. I will not go to work if I am threatened in this manner again. I believe that the crew that I supervise, or at least some of them, will have the same view. I felt my safety was in jeopardy, and I am not willing to continue employment on those terms.

10. There is a time limit on the job. If this kind of interference continues, Universal may not be able to complete the job within the time required.

11. One of the other Universal employees told me that he had been advised that the demonstrators were planning to be back. He had been told that by one of the policemen who was at the scene.

DATED this 10 day of October, 1980.

Gale E Balderson
GALE E. BALDERSON

SUBSCRIBED AND SWORN TO before me this 10 day of October, 1980.

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle

HB1H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,

Plaintiff,

v.

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, all of its members, and the following officers and/or agents of that labor organization, individually and in their official capacities:

Its President (whose name is presently unknown);
Charles A. Witt, Business Manager;
Kelly Grubbs, Business Agent;
Its picketing or demonstration coordinators or organizers (whose names are presently unknown);
Its agents or employees who were or are involved in labor disputes, picketing or demonstrations involving plaintiff (whose names are presently unknown);

_et al_.,

Defendants.

No. 74189

AFFIDAVIT OF
MICHAEL BEROSIK

STATE OF WASHINGTON)
: ss
COUNTY OF KING)

MICHAEL BEROSIK, being first duly sworn on oath deposes and says:

1. I am the field mechanic for Universal Utility Contractors, Inc. ("Universal"), and I have personal knowledge of the facts stated herein.

2. I have been an employee of Universal for almost four years. As field mechanic, I take care of the equipment on the Universal project in Aberdeen. We have about 16 pieces of large

equipment, plus other equipment such as compactors. A lot of this equipment, maybe 70%, is rubber tired equipment. All of it can be easily damaged. All of it is very expensive equipment. It is very important that the equipment be kept in good condition in order to continue and complete the project which is going on in Aberdeen in a timely manner.

3. On October 10, 1980, I was at the Universal job yard at about 6:20. It was still dark. When I arrived, a large crowd had gathered at the intersection of State Street and "K" Street. In the next 15 minutes or half hour, the crowd increased in size.

4. As I walked into the Universal yard, I could hear all kinds of yelling and profanity. It seemed to be directed at everybody who was in the yard.

5. When we got into the yard, the job supervisor told us to stand by and not to get excited or yell back or retaliate.

6. As we stood there, I saw rocks being thrown into the yard from outside.

7. I couldn't see the trucks or loaders pull out from the Universal job yard, since my view was blocked by pipe inside the yard. could barely see the flash bulbs going off as the equipment pulled out. I did look at the equipment when it came back, however. I saw that the mirror on Ed Bidon's truck had been broken. In addition, a windshield on a loader operated by Don Clark, and the windshield on a truck driven by Gale Balderson, had both been smashed. I had seen the equipment before it had gone out and it was in good shape. There was several hundred dollars worth of damage done to the vehicles.

8. I would estimate there were about 75 people involved in this demonstration. At one point I think they were about a dozen police officers there trying to break up the crowd. They finally disbursed at about 8:30.

9. I have been mechanic for about 35 years, and I have done a lot of work in the construction industry over that time. I have never seen a situation like this develop. It seemed to me very dangerous and disorderly. It seemed to me that there was a real risk that somebody might get hurt if the activity hadn't been broken up.

DATED this 10th day of October, 1980.

Mike Berosik

MICHAEL BEROSIK

SUBSCRIBED AND SWORN TO before me this 10th day of October, 1980.

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle

HB1G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC., Plaintiff, v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al., Defendants.	No. 74189 AFFIDAVIT OF Michael Berosik

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor)

Michael Berosik being first duly sworn on oath deposes and says:

1. I arrived at the job yard at Universal at about 7:10 AM. I came into the yard to check the equipment.

2. There was a lot of noise and insults from the people outside.

3. About 7:30 AM I noticed rocks being thrown into the yard when I began to start up the equipment.

4. I continued to try + get my job done, while ducking down behind

the pipe and equipment to keep from being hit.

5. The rockthrowing went on for at least 1/2 hour, until our equipment had left the yard.

Mike Berardt

Dated: 10/24/80
subscribed + sworn to: 10/24/80

Notary Public for state of Washington, residing at Seattle.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al.,
Defendants.

No. 74189

AFFIDAVIT OF
EDWARD G. BIDON

STATE OF WASHINGTON)
: ss
COUNTY OF ________)

EDWARD G. BIDON, being first duly sworn on oath deposes and says:

1. I am a job foreman for Universal Utility Contractors, Inc. ("Universal"), and I have personal knowledge of the facts stated herein.

2. As job foreman, I am responsible for directing the activities of seven other employees of Universal, including equipment operators and laborers who are installing underground utilities in the City of Aberdeen.

3. Universal has a job yard at the corner of State Street and "K" Street in Aberdeen. I have drawn a map of the area and I am attaching a copy of the map to this affidavit.

4. Universal is putting in a sewer system for the City of Aberdeen. About 80,000 feet of pipe is ultimately going to go in on this particular project. Universal has three crews of eight men each, plus miscellaneous personnel, working on this project.

5. From the date we broke ground on the project, there have been pickets in the areas where we were doing the work. The picketers have been carrying signs indicating that they are picketing on behalf of the Operators Union and the Laborers Union. There have been upto six pickets in the location where a crew was working. At first, these picketers did nothing more than carry their signs around, and frequently call us names.

6. About two weeks ago, the picketers began to tell me that "things were going to get rougher." They continued other kinds of verbal abuse.

7. On the morning of October 10, 1980, at approximately 6:45 a.m., I had completed loading my truck and prepared to go to the jobsite. There were about 15 other employees of Universal in the Universal job yard at that time. As I got my truck loaded and pulled out of the yard, I saw a large number of people milling around at the junction of State Street and "K" Street. I have marked the location where those people were standing with "X's" on the attached drawing. As they saw me pull out of the yard, they yelled profanities and that I ought to be shot.

8. I backed my truck back into the yard and talked to the loader-operator behind me, Bill Blumberg. I told him that he should try and stay close behind me and we would try and work our way through the crowd so we could get to the jobsite.

9. When we pulled back out and approached the people blocking the roadway, I blew my horn and started creeping ahead very slowly. As I did so, the people blocked the front of the truck and were on both sides of the truck and around the loader which was coming along behind me. They were screaming and swearing at me and at Bill Blumberg. They were hitting on the truck. Someone grabbed the mirror on the right-hand side and broke it.

It was hard to see since there were flashbulbs going off all over. I believe that these flashbulbs were from newspaper photographers. Apparently, newspaper personnel had been alerted to the fact that this was going to happen.

10. The crowd of people followed my truck about half the way across State Street. After I had gotten halfway across, it cleared out in front of me and I was able to speed-up and get away. The operator in the loader behind me followed along.

11. About a block and one-half further up the street, we saw a police car approaching and we stopped and asked whether he was going to do something about the situation. He said he was going to go up there.

12. I went out to the jobsite and shortly after I arrived I was contacted by radio by the job superintendent and told to come back to the yard. Both of us were concerned that something might happen to us or our equipment if we stayed out on the job ourselves.

13. When I got back at about 7:15 p.m or 7:30 p.m., all of the people were still there and blocking the street. By that time there were about a dozen police cars, including the Hoquim police, the Washington State Patrol, the Aberdeen police, and the Grays Harbor County Sheriff's Office. It appeared to me that the police were talking to the demonstrators and trying to get them to disburse, but they didn't seem to be having much success.

14. The Universal employees got together and stayed inside the yard and away from the union people in the street. While we were in the yard, the people outside continued to yell and swear at us. I saw big rocks on the ground inside the yard which apparently had been thrown in from outside.

15. By about 9:00 p.m. the police had gotten the demonstrators to disburse. However, we felt it was unsafe to send out old crews out because of the number of people that had been involved and the threatening nature of their conduct.

16. I have been a supervisor on construction work for two and one-half years, and have been involved in construction work for ten years. This was the worst and most volatile situation that I have observed in the time that I have been working in construcion.

EDWARD G. BIDON

SUBSCRIBED AND SWORN TO before me this 10th day of October, 1980.

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle

HB1E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al.,
Defendants.

No. 74189

AFFIDAVIT OF John Fruend

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor)

John Fruend, being first duly sworn on oath deposes and says:

1. I was near the intersection of K and State streets in Aberdeen at about 8:00 AM on October 10, 1980. I observed the mass picketing that was going on at that time.

2. I saw Ken Orcott and Charles Spradlin in the demonstration. I know them to be members of the Teamsters Union. Orcott has been identified to me as the Teamsters Strike Captain

3. I was in the same area again on the early afternoon of October 10th, and again observed the demonstrators. On this occasion I saw Chuck Witt, Laborers Business Manager, Kelly Grubb, Laborers Business Agent, and Bob Pittinger, Business Agent for the operators.

7. An Aberdeen Police Officer told my father + I that "Tiny Wharton of the IWA was involved in the morning. Wharton is, I have been told, a Business Agent of the IWA.

Dated this 13th day of October, 1980.

John D Friend

John Friend

Subscribed + sworn to on October 13, 1980.

Hall Baetz
Notary Public in and for the State of Washington,
Residing at Seattle

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, *et al.*,
Defendants.

No. 7418?

AFFIDAVIT OF
Michael Gilbert

STATE OF WASHINGTON)
: ss
COUNTY OF King)

Michael Gilbert, being first duly sworn on oath deposes and says:

1. I am the equipment manager for Universal Utility Contractors, Inc. I am responsible for the maintainence and repair of all Universal equipment.

2. On Saturday, October 11, 1980, I was called by a watchman who had come by the Universal job yard at K and State streets in Aberdeen. He told me that tires on Universal equipment had been slashed and punctured.

3. The damaged equipment is necessary for progress on the Universal Sewer project. Therefore, I arranged for assistance from Ballard Tire Company, and

purchased replacement tires. I then traveled to Aberdeen, and arrived there on Sunday night.

4. I inspected the equipment when I arrived, and observed 15 or 16 tires that had been slashed or punctured. Forteen ~~Ten~~ vehicles had been immobilized, including 3 one-ton trucks, 2 "580" Case Back-hoes, one Dynahoe Backhoe, 2 3/4 ton pick-ups, a Ford one-ton, a Ford tractor, a compressor (trailer mounted), a light-plant, a fuel truck, and one Elgin Sweeper.

5. We began to repair the equipment at about 11:30 PM Sunday night, and completed the work at about 4:15 AM, so that the equipment could be used on Monday.

6. It appeared that a knife had been jabbed in the sidewalls and the casings had been slit. I believe that there were a total of 16 tires that had to be replaced. I would estimate the cost to be in excess of $\$2000^{\underline{00}}$, plus labor costs.

7. The attached photographs show damage to some of the vehicles

8. I have requested that Ballard Tire Company repair any tires that can be repaired

Dated this 13th day of October, 1980

Michael Gilbert

Michael Gilbert

Subscribed and sworn to before me this 13th day of October, 1980.

Notary Public in and
for the state of Washington
Residing at Seattle

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al.,
Defendants.

No. 74189

AFFIDAVIT OF

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor

Ray Hammond, being first duly sworn on oath deposes and says:

1. I pulled my truck up to the corner of "L" street and State street, facing east, at about 7:30 AM. I saw about 50 people outside the Universal job yard, and there may have been more people that I couldn't see. The roads were barricaded by what looked like city barricades.

2. I could hear yelling. I was too far away to hear what was being yelled.

3. I watched three or four objects thrown over the fence into the yard. I couldn't see who threw them, but they

came out of the crowd. I didn't see anything coming back out of the yard.

4. I turned around and left, rather than go into that area.

Dated this 24th day of October, 198

Ray Hammond

Subscribed and sworn to before me this 24th day of October, 1980

Notary Public in and for the State of Washington, residing at Seattle

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC., Plaintiff, v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al., Defendants.	No. 74189 AFFIDAVIT OF David Nass

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor

David Nass, being first duly sworn on oath deposes and says:

1. I am an employee of Universal Utility Contractors, Inc., working on its Aberdeen project.

2. Since beginning work on the Aberdeen project, I have been approached in my home town by a person who told me he was sent by Chuck Witt, the Laborers Business Manager. He told me there would be trouble since I was a "scab" on the Aberdeen job.

3. On October 10, 1980, after Universal shut down for the day, I was approached by two men who swore and cursed at me, calling me a scab and so on. I told them to

leave me alone, and that I was away from the job and that they shouldn't harass me at that time. One of them jumped at me, and I had to fight both. One ran to get help.

4. When I decided to get out of there, I found my car had been blocked. I left on foot, and went to the Universal job yard. When I decided to go back and get my car, I found all four tires had been slashed.

Dated this 13th day of October, 198

David Nass

Subscribed + Sworn to before me on October 13, 1980

Notary Public in and
for the State of
Washington, residing
at Seattle.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al.,
Defendants.

No. 74189

AFFIDAVIT OF
Don Neal

STATE OF WASHINGTON)
: ss
COUNTY OF ________)

Don Neal being first duly sworn on oath deposes and says:

1. On October 10, 1980, at approximately 9:30, I observed a large group of people at 3rd + G, at the site of one of Felton Construction Co's projects. This was a very abusive crowd. I was spit on, yelled at, etc.

2. I saw the crowd again at F and Market from approximately 10:00 to 1:00.

3 I saw signs being carried. One of the signs was being carried by Kenny Sterner, a laborer and a member of local 374 of the Laborers Union

4. I saw Bob Pittinger, business agent of Operators Union local 302, at both 3rd + G and F and Market. He appeared together with Chuck Witt. I am aware that Chuck Witt is the Business Manager of Laborers Local 374.

5. I observed Ruth Mickleson's damage to the concrete pour at 3rd + G. I did not personally see this done, but saw "Scab" written in the concrete.

Dated this 13th day of October, 1980

Donald Neal
Don Neal

Subscribed + sworn to before me this 13th day of October, 1980

Notary Public for the State of Washington, residing at Seattle.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC., Plaintiff, v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, *et al.*, Defendants.	No. 74189 AFFIDAVIT OF Edward Potter

STATE OF WASHINGTON)
: SS
COUNTY OF Grays Harbor)

Edward Potter, being first duly sworn on oath deposes and says:

1. I am the equipment ~~supervisor and~~ superintendent of Felton Construction Company, Aberdeen, Washington.

2. On October 10, 1980, at 1:23 P.M. I was near the Universal Utility Contractors job yard at State and K streets, Aberdeen, observing the demonstratio there. I saw about 20-25 pickets giving discour gestures and hollering. One of our trucks was struck by a rock.

3. I observed Chuck Witt, Business Manager of Laborers local 374, and another tall dark-haired man wearing a yellow baseball cap, walk from State and K street, down the alley behind the Universal job yard. They gestured at the trailers in the yard, as if they were counting. A

police officer followed them, trying to get them back away from the yard. He finally walked them back to the State and K street picket line.

Dated this 13th day of October, 1980

Edward A. Potter

Edward Potter

Sworn to before me, and subscribed, this 13th day of October, 1980

Hall Baetz.
Notary Public of the State of Washington, residing at Seattle.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC., Plaintiff, v. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al., Defendants.	No. 74189 AFFIDAVIT OF

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor)

Florence Smith being first duly sworn on oath deposes and says:

1. I am the office manager of the Universal project yard in Aberdeen. I have personal knowledge of the facts described in this affadavit.

2. My husband is the job superintendent of the Universal jobs in Aberdeen and Hoquiam.

3. I live in a mobile home inside the job yard at State and K streets in Aberdeen.

4. On October, 15, 1980 (Wednesday) I was at the job yard when the mass picketing began at about 6:30 A.M. Most of the demonstrators lined up on the sidewalk across State and K streets from our yard. About four persons with signs were outside our yard, I understand. There were a hundred or more people

5. The people across the street were making a lot of noise, yelling insults at

anyone who walked in or out of the yard. There was a lot of profanity. No rocks were thrown, to my knowledge, on that occasion, and no property damage was done.

6. On Friday, October 24, 1980, a further mass demonstration occurred outside the Universal yard. This time the demonstrators were right across the street from the yard, about 40 feet from our fence. There were about 200 people. They arrived at about 6:30AM. Many were in State street, and others were on the sidewalk. There was more profanity and yelling, and at about 7:00 or 7:30 the people outside were throwing rocks into our yard.

7. I heard a rock hit my house trailer at about 7:30. I went outside and saw the windshield on my personal car — a new Fairmont Futura — had been smashed. I also saw rocks all over the yard that people had thrown inside.

8. I have repeatedly heard my husband tell our men not to do anything violent or to retaliate or yell back. To my knowledge they refrained from doing so.

9. I felt that the situation was dangerous and freightening. I also became extremely angry when the demonstrators broke my windshield and threw rocks into the yard.

Dated October 24, 1980

Florence Smith

Subscribed and sworn
to before me: October
24, 1980

Notary Public for State of Washington,
residing at Seattle.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, all of its members, and the following officers and/or agents of that labor organization, individually and in their official capacities:
Its President (whose name is presently unknown);
Charles A. Witt, Business Manager;
Kelly Grubbs, Business Agent;
Its picketing or demonstration coordinators or organizers (whose names are presently unknown);
Its agents or employees who were or are involved in labor disputes, picketing or demonstrations involving plaintiff (whose names are presently unknown);
et al.,
Defendants.

No. 74189

AFFIDAVIT OF
MERTON E. SMITH

STATE OF WASHINGTON)
: ss
COUNTY OF KING)

MERTON E. SMITH, being first duly sworn on oath deposes and says:

1. I am the superintendent of the sewer projects being performed by Universal Utility Contractors, Inc. ("Universal"), in Aberdeen and Hoquim. I have been an employee of Universal for the past six years. This is the third job I have handled for the company in the area since 1977.

2. The first labor troubles in the area developed in August 1980, when we began the current project. From the first

day, there were pickets on the job, claiming that Universal was unfair to teamsters, laborers and operators. At first, these pickets limited their activity to carrying signs and verbally abusing the Universal employees on the job site.

3. On October 10, 1980, at 6:30 a.m., I unlocked the Universal job yard side gate on State Street, and I noticed a lot of activity at the intersection of "K" Street and State. A lot of people had started to congregate in that area, and were starting to block the street at "K" Street. "K" Street is the route which my crews take to go from the Universal job yard to the job sites.

4. I went into the office and called the police and advised them that a mob of people were blocking the streets, and asked if we could get some assistance. I went back out into the yard and walked into the yard over to the area near the intersection, where the people were milling around and yelling and screaming. They were yelling "scabs" and using various profanities directed at the Universal employees in the job yard. I went back again and called the police to repeat my request for assistance.

5. Since it was getting close to starting time, and some of the employees were getting ready to take the equipment to the job sites, I told them to hold on and see whether the police came and took care of the problem. Finally, one of the foremen and one of his operators took two pieces of equipment out and drove very slowly in an effort to get to the projects. The mob blocked the street in an effort to prevent the vehicles from moving through. Bidon and the operator drove very slowly, as the crowd gathered around the vehicles, pounding on them and yelling at the drivers. As the vehicles continued to move through the crowd, the rocks started flying. A mirror on the truck was broken by

one of the demonstrators. Those two vehicles were able to get through and pulled away.

6. Then another truck driver, who was right behind them, tried to get through, but ultimately had to back up and go back into the yard. A rock broke his windshield.

7. I have attached to this affidavit a copy of a photograph from the Aberdeen Daily World, showing the Universal truck (with a ladder on the back of it) driving back toward the yard. I understand that Ruth Michelson who is shown in the photograph throwing a rock at the truck, is the secretary of the Culinary Alliance and Bartenders Union, Local 791.

8. At one point, another one of our loaders went through and his front windshield was also broken. Someone threw some hot coffee on the driver of that vehicle, Don Clark.

9. The demonstrators began throwing rocks into the yard from the street. One of them struck John Reed, who was inside the yard, on the leg. All of us moved away from the fence in order to keep from getting hit. I did not see anyone throwing anything back at the demonstrators.

10. Finally, a large number of police cars (the newspaper reported that there were 20) arrived and tried to force the demonstrators to disburse. The second photograph which I have attached is also from the front page of The Daily World, and shows the police officers talking to the demonstrators and trying to get them to clear the street.

11. Throughout this time the mob was yelling profanity, "scabs", etc. I told my people to stay out of their view and to try and ignore them.

12. The people that had gone to the job sites were directed by radio to come back to the yard. I decided that we shouldn't

work that day, since the situation seemed to make more problems and violence likely if we went onto the jobs. I didn't want to get either our people or their people hurt.

13. Some of the people identified with the various unions include Tiny Whorton of the IWA (International Woodworkers of America, Local 3-2; Ken Orcott, the Teamsters picket captain; Charles Sparadlin of the Teamsters; and Kelly Grubbs, business agent for Laborers Local 374.

14. I have also attached this affidavit a copy of a handout that was being distributed among the demonstrators. It purports to be on behalf of "organized labor of Grays Harbor" and indicates its affiliates are: AFL-CIO; Teamsters; Longshoremen; AWPPW (Association of Western Pulp and Paper Workers); and WEA (Washington Education Association).

15. The police had managed to get the crowd to disburse by 8:30, and I didn't see any more of these demonstrators for several hours.

16. About 1:00 p.m. on October 10, 1980, I was told that the demonstrators were again going to gather at "K" Street and State. I went back to the Universal job yard about 1:30, and observed that there were about 20 demonstrators in the middle of "K" Street. They were standing talking to a police officer. They moved out of our way as we drove through the area. The demonstrators had disbursed from that area by 2:30.

17. I talked to Jerry Cole, a sergeant of the Aberdeen Police Department. He told me that he expected more problems on Monday and Tuesday. According to an article in the Daily World of October 10, demonstrators stated an intent to "do this Monday and Tuesday too; we'll put them out of work".

18. A typical crew on a Universal job consists of two operators (operating a back hoe and a loader), four laborers, and a foreman.

19. I had driven by the Aberdeen Labor Temple on October 9, and I saw that a large meeting was going on there that evening. I think they may have been organizing this demonstration.

20. As of the date of this affidavit, one of my employees has already told me that he doesn't want to go back to work until this is "straightened out." I think it is possible that other employees of Universal may be unwilling to go to work because of concern about their safety.

21. I have been active in the construction business since 1946. I have observed labor problems over the years, but I have never seen anything of this kind before. I felt there was a great potential for even greater violence, and I think it is likely that somebody will be hurt if this is permitted to continue.

DATED this 10th day of October, 1980.

Merton E. Smith
MERTON E. SMITH

SUBSCRIBED AND SWORN TO before me this 10th day of October, 1980.

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

HB1I

LOCAL JOBS FOR LOCAL PEOPLE

FELTON CONSTRUCTION HAS PROVOKED A STRIKE AND REPLACED LOCAL WORKERS WITH LABORERS WHO SPEND THEIR PAYCHECKS OUTSIDE THE CITY.

THIS ECONOMIC DRAIN HARMS ALL WHO LIVE ON THE HARBOR. INDIVIDUAL WORKERS AND THEIR FAMILIES SUFFER. BUSINESSMEN NOTE REDUCED SALES AND PROFITS. FUNDING IS SLOWED FOR BANKING AND INVESTMENT IN LOCAL IMPROVEMENTS.

WORKING MEN AND WOMEN ON THE HARBOR HAVE REFUSED TO ACCEPT COMPANY OFFERS WHICH WOULD SUBSTANTIALLY WEAKEN HARD-WON RIGHTS AND BENEFITS, AND WHICH WOULD SURELY LEAD TO EVEN GREATER ABUSES IN THE FUTURE.

LOCAL UNEMPLOYMENT IS FAR TOO HIGH, AND IT IS YOUR MONEY THAT IS BUILDING YOUR NEW SEWER SYSTEM.

WE CARE ABOUT YOUR COMMUNITY. WE URGE YOU TO SUPPORT LOCAL WORKERS. DEMAND THAT THE SEWER PROJECT BE BUILT BY LOCAL LABOR, THAT IT BE DONE CORRECTLY, AND THAT IT BE COMPLETED IN A TIMELY MANNER.

ORGANIZED LABOR OF GRAYS HARBOR, LETHA JOHNSON, SECRETARY

Affiliates are:

AFL-CIO
Teamsters
Longshoremen
AWPPW
IWOA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

UNIVERSAL UTILITY CONTRACTORS, INC.,
Plaintiff,
v.
LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 374, et al.,
Defendants.

No. 74189

AFFIDAVIT OF

STATE OF WASHINGTON)
: ss
COUNTY OF Grays Harbor)

Merton E Smith being first duly sworn on oath deposes and says:

1. I am the job superintant for Universal in Aberdeen. I live in the mobile home in Universals yard

2. When I got up at about 5:45 AM, I noticed that cars and people were starting to congregate outside our yard. Most were then at the corner of k and state street, which is on the route we take to get to our jobs.

3. I had been told that there was going to be a mass demonstration there, so we cleared another exit from our yard so our vehicles could avoid having to drive through the demonstrators.

4. The street was barricaded on both sides of K and State, apparently by the police.

5. I told my men to stay calm, and instructed them on the new route out of the yard. I told them not to respond to the people massing and yelling at them.

6 The temporary restraining order was posted on our fence.

7. The crowd got bigger until there were 150 to 200 people outside, yelling and swearing. There were also police cars driving by. Flash bulbs were going off.

8 The crowd moved down State until it was right across from our small walk-through gate.

9. About 7:00 or 7:15 AM, when our people were starting to leave the yard, the demonstrators outside started throwin rocks into the yard. Rocks hit my trailer and my car, and hit equipment. We had parked the trucks so their windows faced away from the crowd.

10. Rocks would come in spurts. This went on until about 8:00 AM. I had told the police about the damage, and about that time the crowd started to disburse.

11. I have attached a photographs of my smashed windshield to this affidavit, at the top and bottom of ~~the~~ next page.

12. The job yard is somewhat protect by a cyclone fence.

13. The Aberdeen police have told me that two more mass demonstrations and possibly three, are planned for next week. One is supposed to be at "L" and 1st or 2nd" in Aberdeen. This is close to one of our job sites. Those jobs are not protected by a large fence.

14. I feel that I will have to quit my employment if we are subject to this abusive and violent conduct. I don't feel that I can continue to work under these conditions.

15. It seems to me that the demonstraters could mass somewhere else, where this kind of violence won't occur.

Dated this 24th day of October, 1980

Merton E.

Subscribed and sworn to before me this 24th day of October, 1980

Notary Public for Washington, residing at Seattle.

DAVIS, WRIGHT, TODD, RIESE & JONES
4200 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
(206) 622-3150

INCIDENT REPORTS

Van Incident 6-1-81

Chuck Galt - Roll Form Supervisor
EMPLOYEE NAME SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-1-81 Time 8 Am Place RUR - Clay St Entry

Who were the participants Striking Employees RUR Industries

Vehicle Make ~~[illegible]~~ Van Color ~~Yellow~~ Brown Lic.# State PA.

Witnesses' Names

Details of Incident As ~~bus~~ Van arrived at plant, I observed Bill Miller Hitting the Van with a 4 foot club. He struck the Van with the club above the drivers door. I later looked at the door and saw a crease above the door where the club struck the Vehicle.

OTHER INFORMATION

Injuries Sustained? Damage to Vehicle

Type of treatment administered N/a

Were pictures taken? yes

Was there any audio of incident? No

Was there video tape of incident? No

(Additional information use reverse side)

Date & Time of call

Received by RColorn

Report #

INCIDENT REPORT

ua Incident 6-1-81

Chuck Galt - Roll Form Supervisor
EMPLOYEE NAME SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-1-81 Time 8 AM Place RUR Clay St.

Who were the participants Striking workers

Vehicle Make Bus Color Yellow Lic.# State Pa

Witnesses' Names

Details of Incident I observed the bus being blocked by pickets at Clay St at 8 AM. I recall Craig Rotunda beating the bus with a large club in the rear area of the passenger. He was wearing blue jeans. Reviewing Video Tape, I observed ① Ray Palmer with a log ramming grill of bus VTR#36 ② Sam Walker ramming Window of bus with a log VTR#39 ③ [redacted] [redacted], [redacted], beating off mirror of bus & breaking Glass in door with long club VTR#40 ④ Gordy Short - walk into street telling strikers to block the bus # VTR 30

OTHER INFORMATION

Con't on Back

Injuries Sustained? Property damage

Type of treatment administered N/a

Were pictures taken? Yes

Was there any audio of incident? Yes

Was there video tape of incident? Yes

(Additional information use reverse side)

Date & Time of call

Received by

Report #

⑤ Bill Brown - Observed him climb into bus VTR# 41

⑥ Harry C Foster - Smashing windshield of bus with log
accompanied by Sam Walker.

⑦ Dick-Oneil - Smashing the bus with a log along
with Dale Hopkins.

Charles J

INCIDENT REPORT

500.00 Est Damage

CLIFFORD YOKOM
EMPLOYEE NAME

SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-3-81 Time 8:00 Place RUR Industries

Who were the participants Harold Miller, Roy Ried

Vehicle Make Ford Dump Color BLUE Lic.# State NY.

Witnesses' Names [redacted]

Details of Incident Got up on The Truck (H Miller 200 Union Vice President
Broke off LEFT Turning signal & Broke out
Roy Reid 350
Right side window & Hit Truck many Times
with Clubs & Pipe
Hit in LEFT arm by Harold Miller
also window broken out by Roy Ried

OTHER INFORMATION

Injuries Sustained? Bruse ON LEFT ARM

Type of treatment administered

Were pictures taken? YES

Was there any audio of incident? YES

Was there video tape of incident? YES

(Additional information use reverse side)

Date & Time of call /

Received by

Report #

STRIKE INCIDENT REPORT

Company R. U. R.

Reporting person Gerald A. Hugg

Date of Incident 6/8/81 Time 5:00 ~~A.M.~~ [✓ P.M.]

Store Location

Exact Location NorTH East AtHLetic CLuB

List identity of persons present and their status, i.e., pickets, working employees, others. If you cannot identify, give best description you can of principals.

Dale Hopkens
Gene Rogers

License numbers and descriptions of cars involved:

NONe

Complete details of incidents: Approximate number of people involved--condition of traffic--events leading up to incident. If threats, give exact language used in quotes or paraphrase and by whom. (Preserve notes you made at the time.)

Dale Hopkens asked me over to see Him. When Lynda and I stoped in FOR a Beer, Dale asked me why I whent To work FOR R.U.R. I TOLD Him I needed work so I whenT. →

(Use reverse side if additional space is required.)

Was incident photographed? ______ If so, by whom? ______

Were police called? NO Time ______ A.M. P.M.

Name and/or number of officer receiving report: ______

Name and/or number of officer investigating: ______

- Dale said I owed Him one and NOT TO Go To WORK anymore; I Had untill Tus. morn. To Decide.

This morn. we Found Two FLate Tires on Lyndas car.

Gene Rogers was Giving a Freind of mine a hard Time also, Be Fore Gene LeFT He said to me. ~~were~~ Dale and I: are good FRends of yours, Don't go to work.

INCIDENT REPORT

3 witnesses
Plus Video Tape

John L. Bush
EMPLOYEE NAME

210-30-6435
SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date June 9 Time 7-45 AM Place CLAY STREET

Who were the participants "JOHN BUSH" ART REID JIM GERSON DENIS CARZINSKI

Vehicle Make FORD Color RED Lic. #______ State N.Y.

Witnesses' Name JEF

Details of Incident WHILE DRIVING EAST ON CLAY STREET IN FRONT OF THE GATES OF RIDGE RACK PLANT MY TRUCK WAS SLOWED DOWN BY SOME PICKETERS FOR THE STEEL WORKERES UNION WHO WERE STANDING IN THE STREET. THEY BEGAN BEATING ON IT. JIM. GERSON BROKE THE WINDSHEILD WITH A CROWBAR ALSO BROKE BY ART REID. THE SIDE WINDOW AND REAR WINDOW WERE BROKEN. A HACHET CAME THROUGH THE REAR WINDOW AND STRUCK ME ON THE ARM

DENIS CARZINSKI WAS CARING THE HACHET

(Signature) John Bush.

OTHER INFORMATION

Injuries Sustained? MINOR CUTS

Type of treatment administered NONE

Were pictures taken? YES

Was there any audio of incident?______

Was there video tape of incident? YES

(Additional information use reverse side)

Date & Time of call______

Received by Jim Broadhead

Report # 6-9-81-

STRIKE INCIDENT REPORT

Company R-U-R Industries

Reporting person John Busch

Date of Incident 7-9-81 Time 6:45 [✓ A.M.] P.M.

Store Location Driveway Lake Street Entrance

Exact Location Same as above

List identity of persons present and their status, i.e., pickets, working employees, others. If you cannot identify, give best description you can of principals.

Don Mong Ron Mong Dennis Stuntz

License numbers and descriptions of cars involved:

62593GBNY Ford F150 Pickup

Complete details of incidents: Approximate number of people involved--condition of traffic--events leading up to incident. If threats, give exact language used in quotes or paraphrase and by whom. (Preserve notes you made at the time.)

Nails in driveway when driving in to work.

nails in all 4 tires

John Busch

A Total of
33 tires with
nails in them
that had to be
repaired.
7-9-81

dditional space is required.)

phed? Yes If so, by whom? Security

Time A.M. P.M.

officer receiving report:

officer investigating:

INCIDENT REPORT

Russell L CARDULLO — EMPLOYEE NAME

211-46-3572 — SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-9-82 Time ______ Place ______

Who were the participants DO NOT KNOW.

Vehicle Make 72 chevy Color GREEN Lic. # ______ State PA

Witnesses' Name Karen Yokum

Details of Incident AFTER WORK I DISCOVERED the Windows IN my CAR WERE BROKEN OUT. FROM what I heARd from KAREN Yokum IS All I KNOW ABOUT IT. My windshield was Smashed + the FRONT + REAR Window on the DRIVER'S Side WERE BROKE + Rocks WERE IN the CAR + Also They hit the CAR DOOR + BACK QUARTER PANAL with Rocks + Left DENTS IN them.

Russell L Cardullo
(Signature)

OTHER INFORMATION

Injuries Sustained? ______

Type of treatment administered ______

Were pictures taken? ______

Was there any audio of incident? ______

Was there video tape of incident? ______

(Additional information use reverse side)

Date & Time of call ______

Received by ______

Report # ______

INCIDENT REPORT

Charles [illegible] 124-38-3588
EMPLOYEE NAME SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6/9/81 Time 7:05 Place West Gate R.V.R. Ind

Who were the participants One of The Mong Twins & Bill Sutton

Vehicle Make Dodge Van Color Red Lic. # CT 12130 State Pa

Witnesses' Name

Details of Incident There wasn't an actual attempt at damage. The Mong Ronald or Donald Twin Told me my number was up and Bill Sutton shook his 4' long club at me.

Charles [illegible]
(Signature)

OTHER INFORMATION

Injuries Sustained? No

Type of treatment administered None

Were pictures taken? No

Was there any audio of incident? No

Was there video tape of incident? No

(Additional information use reverse side)

Date & Time of call

Received by R M Brodhead

Report #

JUNE 9, 1981 -8.35

Charles Martin Hirtzel
1740 Hirtzel Road
North East, Pa. 16428

725-5952

I approached the gate from the east and when I turned into the gate somone stepped up to the drivers side of the car with a crowbar and hit the windshield and someone else hit the rear window with I don't know what.

X Charles M. Hirtzel

Charles M. Hirtzel
1740 Hirtzel Road
North East, Pa. 16428

1968 Plymouth

INCIDENT REPORT

EMPLOYEE NAME

SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date June 9 1981 Time Around 10 PM Place Harold Hugg

Who were the participants

Vehicle Make Color Lic. # State

Witnesses' Name Virginia Hugg Sister of Jerry Hugg

Details of Incident Received phone call woman on the line. Asked are you the mother of Jerry Hugg. Answered: No I am his sister. Reply tell Jerry if he wants to keep his balls he should Not climb the fence. I told her he didnot live here. Reply: I Know where he lives, give him the message. Caller hung up.

Virginia M. Hugg
(Signature)

OTHER INFORMATION

Injuries Sustained?

Type of treatment administered

Were pictures taken?

Was there any audio of incident?

Was there video tape of incident?

(Additional information use reverse side)

Date & Time of call around 10:00 PM

Received by Virginia Hugg

Report #

INCIDENT REPORT

Douglas R King — EMPLOYEE NAME
524-92-3611 — SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-9-81 Time 6:35 AM Place Colfax ST. N.C.

Who were the participants Douglas, David + Dusty King

Vehicle Make Chevy TR. Color Marron Lic. # CP 28319 State PA.

Witnesses' Name

Palmer is union trustee

Details of Incident Pulled up colfax St. was stopped By Chic Palmer car was rushed By strikers + started beating on my truck. Jim Geertson hit my winshield with crow Bar ~~rear window~~. Harlod Miller hit side window + Brother Dusty's arm Put in Reverse + Backed down colfax + went To Police Barricks

(Signature) Douglas R King

OTHER INFORMATION

Injuries Sustained? Dusty Right arm cut with glass

Type of treatment administered Clean + looked at By T McGautting

Were pictures taken?

Was there any audio of incident?

Was there video tape of incident?

(Additional information use reverse side)

Date & Time of call 6:35 AM 6-9-81

Received by Dave Delancy

Report #

/

STRIKE INCIDENT REPORT

Company KOR Industries

Reporting person Douglas R King

Date of Incident 7-8-81 Time 600 A.M. [✓ P.M.]

Store Location

Exact Location BROCKWAY Rd. EAST OF RIPLEY

List identity of persons present and their status, i.e., pickets, working employees, others. If you cannot identify, give best description you can of principals.

THEODORE PARMARTER · BROTHER IN LAW
ROY REID + PASSINGER PICKETERS

License numbers and descriptions of cars involved:

SILVER FORD with RED VINAL TOP
MY MARROON PICKUP + HAYWAGON LOADED

Complete details of incidents: Approximate number of people involved--condition of traffic--events leading up to incident. If threats, give exact language used in quotes or paraphrase and by whom. (Preserve notes you made at the time.)

FOLLOWED FROM EAST SIDE OF RIPLEY
FROM BROCKWAY ROAD TO DAIRY FARM on
WEST SIDE OF RIPLEY JUST EAST OF STATELINE
WHEN I PULLED IN DRIVEWAY ROY REID FLIPED
FINGER OUT OF WINDOW + WAS YELLING REMARKS

(Use reverse side if additional space is required.)

Was incident photographed? NO If so, by whom?

Were police called? NO Time A.M. P.M.

Name and/or number of officer receiving report:

Name and/or number of officer investigating:

June 7, 1981
8:35

Thomas Rupczyk
75½ Robinson St.
North East Pa
725 -1205

At about 6:40 I was traveling to work in my Car. At the corner of 89 and Clay Street a group of ~~work~~ striking workers attacked my car. Dave Eartson struck the passanger door with a club. someone ~~the~~ struk the windshild with a baseball. and others continued to beat on the car. as I continued down the street Don Gibons tossed a rock through the windshild. And at the gate other hit The car.

x Thomas Rupczyk

Thomas A. Rupczyk
Ogden Rd
Westfield, N.Y 14787

73 Buick
429 CHU

INCIDENT REPORT

Lynda D Brown — EMPLOYEE NAME

180-44-2647 — SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6-11-81 Time 4:20 PM Place Police Station VIA phon

Who were the participants Lynda Brown - Officer Huber.

Vehicle Make______ Color______ Lic. ______ State______

Witnesses' Name______

Details of Incident When I called the station to tell Officer Hu that Jerry Shugg & I wanted charges pressed against a gentleman concerning the incident on Wednesday nit a [redacted] his reply was that "he can't do it." when asked wh note, "Because the mayor & the Chief of police have decided that there are too many incidents involv RUR & RUR people and the police department can't handle all of the reports. I was then told that (over

(Signature)

OTHER INFORMATION

Injuries Sustained?______

Type of treatment administered______

Were pictures taken?______

Was there any audio of incident?______

Was there video tape of incident?______

(Additional information use reverse side)

Date & Time of call______

Received by______

Report #______

Jerry & I would have to go down to the local magistrate to file ourselves. I then asked Officer Huber if the people at RUR such as Dave Delancey or Bob Broadhead were aware of this decision. Officer Huber ~~than~~ asked the same question to someone else in his vicinity and I heard the reply "I don't care whether they do know or not." the Officer ~~than~~ came back on the phone & said "No, he didn't think that D. Delancey knew." So I than asked ~~[illegible]~~ Officer Huber what Charges he had originally planned he told me and also informed me that they were going to tell Gene Rogers that he would have to go to the magistrate & file his Charges himself against the Security people. I thanked him for his help & hung up

Lynda D Brown

INCIDENT REPORT

Lynda D Brown
EMPLOYEE NAME

180-44-2647
SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6/11/81 Time 4^{35} Place Local Magistrate (Aba

Who were the participants Lynda Brown & Jerry Hugg - Frank Abate

Vehicle Make_____ Color_____ Lic. #_____ State_____

Witnesses' Name_____

Details of Incident We went down to file the Charges against the 4 guys from Wednesday nite's incident. After we had told Mr. abate why we were there, he asked us if we were sure that Bob Broadhead or the lawyer for Ku had not already file the Charges in front of the D.A that day. I told him that I didn't believe that he had. Abate then replyed that if they had made Charge a affidavit had been made out & filed. & we then ma

(Signature)

OTHER INFORMATION

Injuries Sustained?_____

Type of treatment administered_____

Were pictures taken?_____

Was there any audio of incident?_____

Was there video tape of incident?_____

(Additional information use reverse side)

Date & Time of call_____

Received by_____

Report #_____

ut a report & filed it a second copy would then exist. and either we or if RUK was backing us would have to pay double costs." So were we sure we want to make out & file a complant today?" and he then said "also it is 20 minutes to five, & The report would just sit here overnite." I than asked him for the forms & he gave them to us. He also brought up that the other participants would have a lawyer for sure, I then replied So would we, that Jerry & I would talk to Bob Broadhead on the next day & be back to file Charges. Mr. Abate then asked us to "make sure we would not let these affidavit sheets out of our sight" and didn't explain why he said this, I replyed we wouldn't & we then said good Day & left his office.

Lynda D Brown

INCIDENT REPORT

Charles Galt
EMPLOYEE NAME

184-38-3588
SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6/15 Time 7:50 Place R.U.R South Liberty Roll up Door

Who were the participants ArT Reed & lady Friend. Another Couple I didn't recognize

Vehicle Make ______ Color ______ Lic. # ______ State ______

Witnesses' Name ______

Details of Incident Pounding on Roll UP Door & building with picket signs

Charles Galt
(Signature)

OTHER INFORMATION

Injuries Sustained? ______

Type of treatment administered ______

Were pictures taken? ______

Was there any audio of incident? ______

Was there video tape of incident? ______

(Additional information use reverse side)

Date & Time of call ______

Received by ______

Report # ______

INCIDENT REPORT

Gerald O. Hugg — EMPLOYEE NAME
194-42-5144 — SOCIAL SECURITY NUMBER

DESCRIPTION OF INCIDENT

Date 6/16/81 Time 10:20 Place Black Road
Who were the participants Gerald O. Hugg, Harry Brown, Jim Geertson, Skarezynski
Vehicle Make Doge DART Color light brown or TAN Lic. # ____ State PA.
Witnesses' Name Gerald O. Hugg, Harry Brown

Details of Incident I was ~~[illegible]~~ shaking 3 Rugs for Lynda Browns mother outside about 10:15 when I saw a car setting on Dansite RD. I said to Lyndas Father, I think we got ~~company~~ company. The car Turnd down Black RD. Heading North. The car whent by George Schoenfeldts and stoped, Then shut off There Lights,

(Signature) Gerald O. Hugg

OTHER INFORMATION

Injuries Sustained? ____
Type of treatment administered ____
Were pictures taken? ____
Was there any audio of incident? ____
Was there video tape of incident? ____

(Additional information use reverse side)

Date & Time of call ____
Received by ____
Report # ____

Harry Brown and I whent out the Back door and Left in His car. The Darts Brake Lights Flushed once or twice, Then The Lights whent on, The DART started down the Road and Pulled on RT 436, They didn't Know Harry and I were Following them. They turned off RT 426 on To Coal. They stoped, Harry started For the car, and They Took off, we Followed Them all the way To RT 89 - NorTH, They Tryed To Duck into Lakevew GolF Corse, But we seen them. We whent down RT 89 and turned around. Harry and I spotted Them coming down RT 89, we turned around and Followed Them again, The Dart Turned East on Law RD and stoped, we stoped, Horry got out of The again and walked to The car, They Took off again and Turned NorTH on washington st, and we Headed SOUTH on washington st To go Back to The House.

File
Harassment

STRIKE INCIDENT REPORT

Company RUR INdusTRIES

Reporting person DougLAS R KiNG.

Date of Incident 7-8-81 Time 230 A.M. [✓ P.M.]

Store Location

Exact Location EAST side of RipLEY

List identity of persons present and their status, i.e., pickets, working employees, others. If you cannot identify, give best description you can of principals.

RodgER Ried	PicKeTER
TEd PARMARTER,	BROTHER IN LAW
Cicel McCLelind	FARMER I work FOR

License numbers and descriptions of cars involved:

Red VEGA, MY MARROON PicK uP + HAYwAgon
CicceL's Red PicK uP + HAY wagon both EmPTY

Complete details of incidents: Approximate number of people involved--condition of traffic--events leading up to incident. If threats, give exact language used in quotes or paraphrase and by whom. (Preserve notes you made at the time.)

WENT THROUGH RipLEY going EAST wHEN ~~weneT~~ THROUGH TRAFFic LigHT RodgER wAS wAiTing oN LigHT CHANgE TURN + FoLLowEd ME EAST PASS SUST ouT side of TowN + PuLLEd off on Brockway RoAd wAiTEd TiLL

(Use reverse side if additional space is required.)

Was incident photographed? NO If so, by whom?

Were police called? NO Time A.M. P.M.

Name and/or number of officer receiving report:

Name and/or number of officer investigating:

I PASSED BY + CAME OUT BEHIND ME AGAIN WHEN HE PASSED ME THE SECOND TIME HE HAD HIS C.B. PA SYSTEM ON + WAS REMAKING IN MY BEHAVE. SUCH AS SCAB + OTHER REMARKS NOT CLEARLY HEARD. He Then pulled A U TURN RIGHT IN front of ciecl almost Causing a wreck

this is on
video tape.

Tim Morgans
Report.

I started working at R.U.R. on 7-13-81, from this date to 8-28-81 nothing but name calling happened But on 8-28-81 I was going to worke, and when I turned into the north driveway on Rt. 89, and there were three strikers there. As I was going thru the line Richard Melin hit my windsheild with a pipe, and the other two started throwing stones. Then I paniched and turned around in the driveway. to get out of there. As I was turning onto Rt. 89 my left rear wheel hit the curb and spun me around in 89. Thats when I saw the car coming from the under pass, I thought I had time to get out of his way, but he was coming to fast. He hit me and spun me around 180°. I had my lights on but he didn't see me because of the strikers. After the cars had stoped my two riders (Mike + Jeff) and I got out of the car and ran because the strikers came after us. As soon as I heard the sireins I went back to the wreck, thats when Officer Allen took me down to the station. Mike + Jeff were taken to St. Vincents Hospital. I went the next day.

After the wreck nothing much happened till 10-16-81 when my wife took me to work. On her way out they wouldnt let her by. When they did let her go they tryed to get her to pull out into the line of traffic.

On the days of 10-19-81 thru 10-27-81 (so far) I've been threatened spit on and called names by Richard Melin and other strikers.

On the 26th + 27th Melin and the others have told me that they know where we live, and have given the exact location of my home. This has got my wife and I scared, and know we jump at every sound we hear, ~~[illegible]~~

Ever since the violence started my wife has our three shot guns ready for any trouble, while I'm at work and at night. I'm afraid the strikers have my wife scared enough that she would use the guns if she had to.

Timothy C Morgan

DEPOSTIONS OF JOSEPH MANNINO

JOSEPH MANNINO
5161 Tripoli
Los Alamitos, CA 90720
(213) 430-0340

COPY

John Van de Kamp
District Attorney, L.A. County
210 West Temple St., 18th Floor
Los Angeles, CA 90012

Dear Mr. Van de Kamp:

I am respectfully requesting that you intervene on my behalf in a matter that involved assault and battery on me. Please allow me to give the details so that you can evaluate the merit of my case.

I was assaulted in the street on July 10, 1981 at approximately 3:30 PM. I was leaving my place of employment and was in my vehicle. I had just left the driveway and entered into the street. Approximately 50 feet from the driveway, a man by the name of Tom Borruso stood in a crosswalk and would not allow me to proceed eastbound on Rush Street. After waiting a long time I honked at him. He then proceeded to the side of my vehicle and kicked it. I got out of my vehicle and went around to the passenger side to inspect the damage. At that point he attacked me by charging into me with his shoulder. I was subsequently assaulted by other people as well.

I have suffered extreme losses due to this and I want the law and the legal process (which a citizen is entitled to) to be enforced on my behalf.

As a result of this assault I had to go to the Los Alamitos Hospital Emergency Ward with blood in my urinal tract. The same condition still exists. Subsequent to that treatment, the following has occurred:

1. I have been treated by Dr. William T. Naftel, urologist.
2. I have suffered partial loss of hearing in my left ear, which is permanent. The treatment for this has been performed by Peter Bailey, MD, ENT.
3. I have suffered damage to my neck and back and have been treated three times a week. It is expected this treatment will last at least one year. This treatment has been performed by Anselmo Pineda, M.D., neurological surgeon.

4. The damage to my physical being is as follows: Blood in the urine, loss of hearing to the left ear, extensive bruises on the body, and severe muscle spasms in the neck and back.

5. A personal financial hardship has been incurred by me, which has involved an outlay of approximately $2,000.

I will point out that there has been a labor dispute in progress at my place of employment, Roberts Graphic Arts. However, I cannot accept this as a basis for my not seeking full protection under the law for myself and my family. I feel, as a matter of fact, that I have been targeted by the union for extreme harassment and physical harm. I feel the union officials should be held accountable for these actions against me (which also involves a complete destruction of my car's paint job and all of my tires). As a matter of fact, a union official was present while I was being assaulted.

I filed a complaint to the District Attorney on 7/13/81 and had a hearing on August 3, 1981. The hearing officer was William G. Herrera whose office is in the Rio Hondo Municipal Court Building in El Monte. I was very disturbed that he had already made a decision on not allowing my case to go to court. His reason was because it was a union matter. I asked my legal counsel to refer the matter to Mr. Herrera's superior and that person also rejected my request. I must say that I am more emphatic than ever about this. There were many false statements and false testimony that was given by my attackers at the hearing. I should point out to you that there was third party witness to the entire assault. She was sitting in her car with a plain view of the entire incident. She is willing to testify as to the exact circumstances of the assault on me.

Mr. Van De Kamp, you are my last hope. It is my desire to press for criminal charges. I have not received any protection from the sheriff's department and now I am being rejected by the District Attorney's office. I am seeking my rights under the law. I feel a private citizen must have someone to turn to, and I am doing so by writing this letter to you.

Please give this matter your most serious consideration. I would trust that you will decide favorably in my behalf and allow me to pursue this matter by filing criminal charges and taking the matter to court.

Please contact me if you have further questions. I am available for a personal interview through your department.

Respectfully,

Joseph Mannino

Joseph Mannino

JM:ml

cc: ✓National Right to Work Legal Defense Foundation, Washington, D.C.
Victor Yacullo, Attorney, Kindel & Anderson

P.S. I am enclosing copies of declarations pertaining to this assault on me, as well as a copy of my July 20th letter to the Graphic Arts International Union.

DECLARATION of JOE MANNINO

At all time material to this proceeding, I was an employee of Roberts Graphic Arts and a member of Graphic Arts International Union.

I was one of the employees who continued working for the Company when its Final Offer was implemented on 5/13/81. I have been working steadily every day since that date.

I went to a Union meeting in downtown Los Angeles the morning of 5/13/81. At that meeting the Union President, Douglas Moloney, made a statement to the employees of Roberts Graphic Arts as follows: "Do whatever you have to do to those employees who cross our picket line. You know what you have to do". I feel this was an improper thing for a Union official to be saying to his members. I feel this type of statement incites hard feelings and reaction for Union members to commit violence.

I contacted my employer that day relative to continuing in their employ and I have been working each day since that date. The Company did not coerce me into coming to work, nor did they force me to sign any type of agreement as to my terms of employment.

Dated and executed this 4th day of June, 1981, at South El Monte, California.

I declare under penalty of perjury that the foregoing is true and correct.

Joseph Mannino

Signature

DECLARATION OF JOSEPH MANNINO

I, Joseph Mannino, declare as follows:

I have firsthand knowledge of the facts stated herein and could competently testify thereto if called as a witness.

I am an employee of Roberts Graphic Arts. I work as a lithographic platemaker. I am a member of the Graphic Arts International Union. I have been a dues-paying Union member for 21 years. I worked at Roberts Graphic Arts before the strike started and have chosen to continue working for my employer.

On 7/10/81 at approximately 3:30 PM I was the victim of an assault. The circumstances surrounding this assault are as follows:

I was departing from the driveway at the end of my work shift. The picketers at the driveway exit blocked my exit for an unusually long period of time, approximately two minutes. After they opened up the line for me to pass through, I entered onto Rush Street and made a left turn. Approximately 30 to 40 feet away from my driveway exit point there was another picketer, Tom Borruso, standing in the pedestrian crosswalk on Rush Street at the corner of Troy Avenue. He stood in the crosswalk facing me with his arms outstretched. He refused to move and held me in that position, stopped at the crosswalk for at least one full minute. He then walked over to the passenger side of my vehicle and I proceeded to start moving again. At that point he kicked the front panel on the passenger side. I stopped and got out of my vehicle to look at it where it had been kicked. Upon inspecting the area where the van had been kicked, I saw a footprint on the passenger side door. I noticed Borruso was now standing approximately ten feet away while I was inspecting my vehicle. Bill Kerwin, Union official, was positioned standing on the sidewalk about 15 feet away. He had a camera and was taking pictures. Borruso then came charging at me and hit my abdomen with his shoulder in a tackling-type of a charge.

At the same time another picketer, Steve Smolka, assaulted me from the rear. I managed to grab Borruso around the shoulder at this time. Smolka had me in a choke-hold with his left arm from behind. He was hitting me with his right fist on my back. Smolka then wrestled me down on the ground, still holding me in a choke hold from behind. I was still holding on to Borruso. During the melee another picketer kicked me on the hip while I was down. (Bob Hill)

As a point of information, I am 53 years old. I am 5 feet 5 inches tall and weigh 145 pounds. Both Smolka and Borruso are young men in their early thirties. The swarm of men who came to join them were mostly young men in their twenties and thirties. I should point out, Smolka is approximately 6 feet 2 inches tall and weighs about 200 pounds.

Another picketer, while I was pinned down in the street, entered into my van on the driver's side and took the keys from the ignition. This key chain carries all of my personal keys, including my house keys. This makes me very fearful for my safety and my family's safety. Several of the picketers know where I live. I have already been a victim of continual harassment, a ruined paint job on my brand new car, and three ruined tires.

During the fracas on the street where I was being held on the ground, there were at least six other picketers preparing to jump in on the action. Fortunately, the security guard at the driveway exit had heard the commotion by this time and came to my rescue. At that point all of the picketers dispersed, including Borruso who got off of me and Smolka let go of me. After we got up and I asked for my keys, Smolka again started cussing at me and tried to get me to fight.

I then took an extra set of keys out of my pocket, started my vehicle and returned to Roberts Graphic Arts and went up into the office and made a telephone call to the Temple City Sheriff's Station. Two police cars came within five minutes. I have filed a criminal complaint with the proper authorities.

I was in an extremely emotional state of mind during the attack on me. I suffered sharp abdominal pains, back pains, and had a swelling on my hip. In addition to this I had blood on my elbow and thought that perhaps I had a cracked bone in my elbow joint, as it was quite painful.

That same day I went to Los Alamitos General Hospital and they ran extensive tests and X-rays to see if there were any internal injuries. The doctor who ran the tests stated I had blood in my urine and he advised me to stay in a doctor's care for close observation. He also instructed me to see a physician for follow up care within three days. I am attaching Exhibit A which indicates the medical treatment I received at the Los Alamitos General Hospital.

I am still experiencing neck pains, abdominal pains and some nausea. The bruise on my hip, which I showed to the Sheriff's Dept. sergeant, is still bothering me. I am continuing under a doctor's care.

Two people were watching the incident from the front office window at Roberts Graphic Arts, 9323 Rush Street. Those people are office employees of the Company; their names are Barbara Kaupang and Douglas Johnson. Another employee, John Di Gildo, came out into the street with the security guard, Bill Thornton, to assist me at the time they had me pinned to the pavement.

During this entire incident Bill Kerwin, Union official, was taking pictures on the sidewalk within 15 feet of the fight. He made no attempt to stop the picketers or control their behavior.

I declare under penalty of perjury that the foregoing is true and correct.

Dated and executed this 13 day of July, 1981, at South El Monte, California.

Joseph Mannino

DECLARATION OF JOSEPH MANNINO

I, Joseph Mannino, declare as follows:

During my appearance at the hearing held in the El Monte District Attorney's Office by hearing officer, William G. Herrera, on August 3, 1981, a statement was made by Tom Borruso and agreed to by Bill Kerwin and Steve Smolka. Borruso stated he was in the crosswalk because he was going to the camper (motor home) which was at the service station for servicing of the holding tank facilities.

I went to the Texaco service station, southwest corner of Rush Street and Rosemead, and talked to Don Hull. Mr. Hull advised me he does not have facilities to service holding tanks and would not allow it on his premises.

Other than a Union 76 service station across the street from the Texaco station, there is no other service station within walking distance of approximately one mile.

At the time of the incident on 7/10/81 and the police arrived in a few minutes, I was in the Roberts' building. I saw the motor home come around the corner from Troy Avenue, turn right on Rush Street heading west, where it parked in front of 9311 Rush Street.

I declare under penalty of perjury that the foregoing is true and correct.

Dated and executed this 7th day of August, 1981, at South El Monte, California.

Joseph Mannino
JOSEPH MANNINO

DECLARATION OF BARBARA KAUPANG

I, Barbara Kaupang, Declare as follows:

I have firsthand knowledge of the facts stated herein and could competently testify thereto if called as a witness.

I am an employee of Roberts Graphic Arts. I work in the office and have been employed steadily by that Company since September, 1978.

On 7/10/81 at approximately 3:30 PM, I watched from the window as an altercation took place in front of our building, approximately 50 feet to the east, on Rush Street.

I saw an employee, Joe Mannino, leaving the driveway at the end of his work shift. He was held at the driveway exit for an unusually long time, as the picketers walked very slowly in front of his car. As Mannino pulled out into the street, I could see another picketer, Tom Borruso, standing in a crosswalk on Rush Street, approximately 50 feet to the east, at the corner of Rush Street and Troy Avenue.

Mannino, who was in a tan van, drove slowly toward Borruso and stopped. Borruso stood directly in front of him--facing Mannino, who had stopped in his vehicle. Borruso made no attempt to walk or move from his stationary position in the middle of the street. He stood there for well over a minute verbalizing something to Mannino and holding out his arms in a challenging manner. Mannino did not drive forward. There was a fire truck and several other vehicles being held behind Mannino's van--as Borruso was blocking the street access.

Then Borruso walked over to the passenger side of Mannino's van and moved his body towards the van. At that point, Mannino got out of his van and went around the front on over to the passenger side. At this time other picketers left their picketing activity and went over to the area of the van.

A fight then broke out. I saw Mannino and Borruso on the pavement in the street, near the rear of the passenger side. Borruso had Mannino down with his arms locked around Mannino's waist area. Mannino was trying to fight back, but he was pinned down to the pavement by another person who was holding him from his rear side. I couldn't see who the person was, but I could see his arms holding Mannino. By now there were approximately ten other picketers in a group standing around the three men who were down on the street pavement--between the van and the curb.

From the beginning of the entire incident, Union official Bill Kervin was standing close by on the sidewalk taking pictures. He made no effort to break up the fight or disperse the picketers. There were no other people present to help Mannino.

Shortly thereafter the security guard, Bill Thornton, left the driveway area and went out to the area where the altercation was taking place and the two men let go of Mannino.

It was my observation that Borruso provoked this entire incident. Mannino did not enter into the crosswalk with his vehicle.

The crowd of people then started to spread apart and disperse.

Also another employee, John Di Gildo, went out into the street as the people were breaking up. By this time, at least 12 to 15 cars were backed up, including the fire truck.

Borruso then came back across the street in the crosswalk. He had a torn shirt. He left shortly thereafter.

I declare under penalty of perjury that the foregoing is true and correct.

Dated and executed this 30th day of July, 1981, at South El Monte, California.

Barbara Kaupang
Barbara Kaupang

DECLARATION OF DOUGLAS JOHNSON

I, Douglas Johnson, declare as follows:

I have firsthand knowledge of the facts stated herein and could competently testify thereto if called as a witness.

I am an employee of Roberts Graphic Arts. I work as an accountant and have been employed by the Company throughout these proceedings.

I was a witness to an incident which occurred on July 10, 1981 at approximately 3:30 PM on Rush Street, approximately 40-50 feet to the east of our Company address.

Joseph Mannino, a current employee of Roberts Graphic Arts, was stopped at the pedestrian crosswalk in his VW van. I looked out the office window at a point where he had left his van and was on the other side of it, embroiled in a fight with two other people. They were rolling on the pavement in the street. Because the three were on the opposite side of the van (passenger side), I did not get a clear view of who the other people were.

In addition, there were apprpximately eight additional picketers surrounding the three people brawling in the street.

During this action on the passenger side of the vehicle, I saw Bob Hill, one of the picketers, enter into the driver's side of the van. He put his foot up on the step and reached around the steering wheel to the area of the ignition and appeared to take an object out of the van. He came back out of the van with a cupped hand and walked over to the sidewalk. He stood on the sidewalk next to Tom Borruso, another picketer. This was immediately after the fight had broken up. Hill spoke a few words to Borruso. Borruso then extended his arm and opened his hand. Hill then opened his cupped hand and handed to Borruso the object that was in his hand.

Borruso then walked across the street and came over to the area in front of our office, where the pickets normally are located. He had a torn shirt. Borruso, at that point, had a short conversation with another picketer, Vince Lynn. The two of them then left the area, walking east on Rush Street. I saw Vince Lynn get in his car and leave. Borruso did not return.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of July, 1981, at South El Monte, California

Douglas Johnson

Douglas Johnson

DECLARATION OF VANETTA GARRIO

I, Vanetta Garrio, declare as follows:

I have firsthand knowledge of the facts stated herein and could competently testify thereto if called as a witness.

I am a housewife. I was accompanying my husband on his business calls on 7/10/81, at which time I was a witness to a verbal and physical attack on a man who was leaving Roberts Graphic Arts.

The circumstances are as follows:

I was sitting in my car with my niece, Robin Lindsay, who is 12 years old. We were across the street from Roberts Graphic Arts at 9323 Rush Street, South El Monte. I was waiting for my husband who is a salesman for Howson-Algraphy, Inc. He was inside the building at Roberts Graphic Arts.

At approximately 3:30 PM on 7/10/81, I was a witness to a fighting incident approximately 40 feet from my car. It was directly in front of me, as I was faced in an easterly direction on Rush Street.

I saw a man in a Volkswagen van leave the driveway at Roberts Graphic Arts. He turned out of the driveway heading east on Rush Street. There was another man standing in the crosswalk on Rush Street, approximately 40 feet east of the driveway exit. This man had a goatee. He was one of the picketers.

The man with the goatee stood in the crosswalk and prevented the van from moving along on Rush Street. The man in the van came to a stop and sat in his vehicle while the man with the goatee blocked him. The man with the goatee was yelling and cussing.

The man with the goatee then walked over to the front passenger side of the van and kicked the front side panel. The driver of the van got out and walked around to the passenger side. He said to the goateed man something like "what are you kicking my van for?" They were then jawing back and forth.

In an instant the man with the goatee charged into the van driver and they started fighting and wrestling. Picketers ran to the scene and were swarming all around the van driver. Another tall, dark-haired man was grabbing the van driver.

There was a man in a cowboy hat standing on the sidewalk taking pictures with a camera.

I don't know any of the people involved, but I can state that I had a clear view. The van driver was out-numbered about 10 to 1 and he was definitely the victim in the entire matter.

The man in the goatee was the aggressor and he caused the whole incident.

I declare under penalty of perjury that the foregoing is true and correct.

Dated and executed this 10th day of July, 1981, at South El Monte, California.

Vanetta Garrio

DECLARATION OF BILL THORNTON
(Your Full Name)

Your Business Address 5301 Laurel Canyon Blvd., No. Hollywood CA

Occupation Security Supervisor Employed By Centurion Security

Age 34

Date of Occurrence 7/10/81 Time 3:40 AM PM x

Location Roberts Graphic Arts City So. El Monte

Where were you? At first on Roberts' property, then in street east of Roberts' driveway, approximately 70 feet from driveway.

What were you doing? observing strikers and maintaining security

Explain in detail what you saw. In regard to incident with Joe Mannino (employee of Roberts Graphic Arts), Tom Borruso (a striker), Steve Smolka (a striker), and Bob Hill (a striker), I observed at time of incident (see previous declaration), the motor home used by strikers, parked on Troy Ave. Motor home was on west side of Troy at corner of Rush St. Motor home was facing south toward Rush St. The crosswalk where incident took place was directly in front of motor home. After two units from Sheriff's Dept. arrived, the motor home was moved west on Rush Street. It was parked on north side of Rush Street in front of "L.A. Piping" which is located directly next to Roberts Graphic Arts.

What statements did you hear at that time, and who made them?

List all other witnesses. John Di Gildo - Office personnel at Roberts Graphic Arts

Dated and executed this 7th day of August, 19 81,

at South El Monte, California.

I declare under penalty of perjury that the foregoing is true and correct.

Bill Thornton
Signature (Full Name)

DEPOSITIONS

July 20, 1981

CERTIFIED MAIL
Ret. Rec. Requested

Mr. Douglas Moloney
Graphic Arts International Union
Local 262
920 West Olympic Blvd.
Los Angeles, CA 90015

Dear Mr. Moloney:

I am hereby resigning from the Graphic Arts International Union, Local 262. This is effective immediately.

I have been a member for many years, but I do not care to continue with my membership.

The Union no longer represents my best interests, in view of the things that have occurred over the past two months. I am very upset and in disagreement with several of the positions you have taken, and the events that have occurred, such as:

1. The Roberts final proposal was never properly and completely presented to the employees by the Union leadership. For example, I think any intelligent person would have to agree that the major medical/life insurance plan submitted by Roberts is a vastly superior program.
2. Your position that we were locked out at Roberts Graphic Arts is not correct. I and several other Union members have continued working.
3. Your position that I and my fellow Union members would collect unemployment compensation is not correct. I know, from my understanding of the law, that this would not have been possible (because of a strike condition).
4. The things that were said at the Union meeting on May 13th regarding picketers are totally contrary to my beliefs.
5. The complete damaging of my car's paint job and the ruin of its tires has caused me a great financial hardship.
6. It appalls me that the Union leadership is so narrow-minded that it will not send any of these striking members out on jobs where they can earn a livlihood for themselves and their families. I am aware, for example, of current job openings for platemakers--and you refuse to send these men out to secure these jobs. Many of the strikers are very good men with excellent job skills. It seems incredible that you would prohibit them from going out into the job market.

Mr. Douglas Moloney
GAIU, Local 262

I have maintained my membership throughout this ordeal, hoping a settlement would transpire in the negotiations. I can't in good conscience, however, continue after the most recent incident. The final straw occurred on Friday, July 10, 1981. I was the victim of a physical assault (resulting in injuries) by three fellow Union members. At the same time, my car keys (including house keys) were stolen from the ignition of my car--in full view of witnesses. Furthermore, your paid Union official, Bill Kerwin, stood idly by--taking pictures of the entire assault! Being attacked from the front and the back in the presence of 10-12 other GAIU members and having a Union official enjoying the whole affair by taking pictures, is more than I am willing to accept as a member. This is the same Bill Kerwin that I have accompanied on a Union organizing trip in the past.

To say the least, I am completely disappointed in the Union leadership (or lack of leadership) in this whole matter--going clear back to the initial days of the negotiations--through the present time.

Doug, this intimidation by the GAIU members has gotten so serious that I have had to set up a neighborhood watch in my residential block--to watch over my home and my family. In addition, I have made special arrangements with my local police department to watch over my home. These matters are very upsetting to my whole household. I am sure you would not want yourself to be placed in such a position.

I want you to immediately cancel my group health insurance and advise me of my vested interest in the Supplemental Retirement Program.

These many years I have worked in the craft--I never thought I would be writing this letter of resignation--but I will not subject myself to any further abuse or harassment. I will expect that you and your lawyer give the GAIU members proper advice in this regard. My position is final and clear-cut.

Sincerely,

Joseph Mannino

JM:j

ARTICLES

[From the Philadelphia Inquirer]

GRUBB PLEADS GUILTY

EX-TEAMSTER ADMITS SCHEME

(By Dick Cooper)

Former Teamsters Union official Gordon G. Grubb pleaded guilty yesterday in federal court here to making a false report to conceal a scheme that paid him $70,400 in kickbacks from union business agents.

Grubb 61, of the 3600 block of Conshohcken Avenue, admitted in court that he had made the false report to the U.S. Labor Department. He also admitted that he had evaded federal income taxes by not reporting the kickbacks as income.

Assistant U.S. Attorney Michael L. Levy recommended to U.S. District Judge J. William Ditter Jr. that he sentence Grubb to two years in prison. The maximum penalty for the charges is four years behind bars and a $15,000 fine. He is expected to be sentenced next month.

An attempt by Grubb to plead guilty to the charges last month was rebuffed by Ditter because that plea agreement called for only an 18-month sentence.

Grubb was the secretary-treasurer and chief executive officer of Teamsters Local 830, which represents drivers who deliver beer and soft drinks in the Philadelphia area. He was defeated earlier this year in a bid for re-election as president of Teamsters Joint Council 53.

He has just completed a 90-day federal-prison term in connection with a 1979 conviction for illegally obtaining a $70,000 loan from Local 830's credit union when he was charged Oct. 26 with taking the kickbacks.

According to a memorandum filed with the court by Levy, the kickback scheme began in early 1977 and continued until mid-1980. The 10 business agents of Local 830, who were appointed by and served at the pleasure of Grubb, made weekly payments to Grubb. The 10 were-not charged and would have testified if Grubb had gone to trial, the memo said.

The business agents were paid $60 each a week in expenses that they were not requred to account for, the memo said, and that money was paid in cash to Grubb's secretary, Matilda Garczynski.

"Ms. Garczynski would testify [if called to court] that every week she took these cash payments from the business agent, put them in an envelope and gave the envelope to Grubb," Levy wrote. He said she was not charged in the scheme.

The weekly payments were not listed as Grubb's income on the annual financial reports that all unions are required to submit to the U.S. Labor Department the memo said.

IRS agents reviewed Local 830 records, and determined that Grubb received $23,700 in kickbacks in 1978, $31,200 in 1979 and $15,500 in 1980, according to the memo. Although the investigation indicated that payments were made to Grubb in 1977 Levy said, the government decided it did not have enough evidence to prosecute him for that year. Under the tax charge, Grubb was accused of failing to report on his income-tax return the $31,200 in kickbacks he received in 1979.

Gribb pleaded guilty yesterday to making a false report on the 1978 kickbacks and failing to report the 1979 kickbacks to the IRS. The charges pertaining to the 1979 and 1980 reports to the Labor Department were dismissed.

[From Broadcasting, Washington, D.C., Sept. 28, 1981]

CBS's TUCKER HOSPITALIZED AFTER INCIDENT AT UNION RALLY

REPORTER SAYS HE WAS "SLAM DUNKED" BY GUARD; UNION SAYS HE WAS TRYING TO GO WHERE HE DIDN'T BELONG; INJURIES INCLUDE BROKEN RIBS, BLOOD CLOT, BRUISED LUNG

CBS News's Lem Tucker was resting more or less comfortably in George Washington Hospital, in Washington, last week, the clear loser in a confrontation with a guard at the AFL-CIO Solidarity Day rally he had been covering. He wasn't sure how much longer he would be in the hospital—that depends on the blood clot on his spleen. But he is determined to do something about protecting reporters in the future against the kind of punishment he took.

The incident—captured on tape and shown on the CBS Evening News following the rally—involved a question of where Tucker and his camera crew could enter with their press credentials. He wanted to do some cutaways in an area on the Washington Monument grounds behind the platform used by the entertainers. But a guard described by Tucker as "burly" and wearing an American Federation of State, County and Municipal Employes tee shirt stopped him from continuing.

Tucker, an aggressive type whom union people would call pushy, argued that he had been given permission earlier for a session behind the platform. At that point, he said, he saw the union official who had given him that permission, and started to move toward him to ask him to clear the way. That was the last step he took.

Tucker who is 43 years old, 5 feet 10 and 147 pounds, tells what happened next: "He [the guard] grabs me, squeezes me, and raises me up and slam dunks me. I would have made a great basketball." Not really; he didn't bounce. He was left with three broken ribs, a bruised lung and the blood clot on the spleen, which may require surgery.

An AFL-CIO spokesman, Rex Hardesty, offers a different version, based on reports he received. He said Tucker on two earlier occasions had gone to the head of the line of reporters and camera crews and entered the area without waiting his turn. "We all know him," Hardesty said by way of explanation of the tolerance he said the guards showed Tucker. "He's CBS."

But the third time, Hardesty recounted, the guard told Tucker he'd already had two turns and some people were waiting for their first. Hardesty said Tucker at that point engaged in some "digital communication," and said, "Screw you, I'm going in."

Tucker brushes off Hardesty's account as unverified hearsay. "Hardesty was nowhere in sight," he said. Besides, Tucker said, "if the guy thought he was 100% right in stopping me, did he have to go beyond stopping me?"

The guard said to have been involved in the incident is Mose B. Ray, a 38-year-old resident of Oxon Hill, Md., an employe of Washington's Department of Sanitation, and a member of AFSCME Local 2091. He was arraigned in D.C. Superior Court on Thursday on a charge of simple assault. The charge could be changed by the U.S. attorney's office after a review of the report filed on the incident by the Park Police.

The incident may not end with a criminal prosecution. Tucker said reporters frequently are subjected to "heat" in situations involving crowds. "You never have trouble with the officialdom, but when you deal with the type who keep order, no one knows what causes they push." Then he said, "One way or the other, that guy [Ray] will be prosecuted."

Tucker has retained a lawyer "to protect my rights." And the lawyer, Myron Mintz, while insisting that the primary area of concern is Tucker's health, noted that they have "a variety of legal options" open to them. One, he said is a damage suit against the AFL-CIO. CBS attorneys are also looking into the matter. But a spokesman for CBS News said the network had not yet made a decision on what action, if any, it would take.

[From the Fort Worth Star-Telegram, Nov. 11, 1981]

LABOR AND CORRUPTION

There should be no need for special laws to deal with corruption among labor unions. Corruption is corruption whether it is in labor, business or government. And the law as it applies to everyone should be sufficient.

However, that does not seem to be the case. There is in Congress legislation to toughen laws dealing with labor leaders who abuse their office.

The need for stronger law is not to say that labor is corrupt. There are both good and bad labor leaders, just as there are both good and bad leaders in any area of our society. But there has been enough corruption in labor to warrant special consideration by Congress.

Last week, Lane Kirkland, AFL-CIO president, endorsed the tougher legislation with some reservations. Kirkland said that when a union official misused his office he did not only stain his honor but he tarnished that of "the scores of men and women who have labored to create and maintain organizations worthy of the members."

It is encouraging to hear the president of the AFL-CIO endorse tougher action to rid unions of corruption. Such is not the case throughout labor.

Last summer, the Teamsters Union ignored the fact that the leading candidate for its presidency was under indictment for bribery. It elected Roy Williams. In addition, the Teamsters turned back an effort by dissident members to create an ethical practices committee.

And, of course, the public is only too familiar with the Teamster history—the likes of Jimmy Hoffa and Dave Beck, and questionable loans from the Central Teamsters Union Pension Fund.

Not all Teamsters are corrupt. But the union has a bad name because of the corruption that has been linked to its name over the years. Electing a president who is under indictment and defeating efforts to set up an ethical practices committee are certainly not ways to improve a bad image.

Passing legislation to make it tougher on union officers who violate the law is not going to improve labor's image either. But it will make it more difficult for corrupt union personnel who are convicted of a crime to return to a leadership role in labor.

And a get tough attitude may force those in labor who are reluctant to acknowledge their blemishes to make an effort to clean house from within.

[From the Fairbanks News-Miner, Nov. 16, 1981]

UNION-LABOR FRICTION ON THE RISE

(By Susan Fisher)

It began with broken windows, verbal threats, slashed tires, and BB pellets. It has escalated to hefty damage to rigs and freight, gunshots and threats against life.

Those striking and those being struck are pointing fingers at each other, but clearly the emerging pattern is that Fairbanks is experiencing a greater number of violent incidents relating to labor disputes.

Over the weekend a rig's cab and engine were destroyed by fire. A tanker truck loaded to head north was emptied of 2,000 gallons of diesel fuel. A Teamster was shot at.

Law enforcement officers can't say with any evidence that all of the above incidents are related, or who may be at fault.

The finger-pointing between the Teamsters union and the firms being struck amounts to a smoking gun. Police arrive at the scene with only vague accusations and hearsay to deal with, but there have been a few arrests since strike action began this summer.

Teamsters are on strike against K&W Trucking, Sourdough Express, Drilling Mud Haulers and Odom (liquor) Distributors.

Labor contracts with each of those firms have expired, and negotiations are described as at an impasse. Altogether, the strike actions in Fairbanks involve almost 140 union jobs.

Picketers say non-union truck drivers have tried to run them over. Business owners say the strike situations at thier yards have gotten out of hand and they've had to hire private security guards for protection.

Union leaders say "strikebreakers" are being brought in from Outside Business owners say the union is bringing "goons" to Fairbanks to incite picketers.

Both sides say weapons are being seen at the strike sites, but each blames the other.

Gary Atwood, local Teamsters business agent, conceded that the strike situation is "a highly emotional thing."

"There's not a lot I can say. We're not condoning any violence on the picket lines. We want a peaceful picket," said Atwood.

But Atwood did say that Teamster leaders won't take disciplinary action against members arrested and charged with violence until the matter is resolved in court. "Otherwise, it's just an allegation," he said.

Atwood did say that if individual Teamsters refuse to abide by instructions at a picket site, they are violating the union's constitution.

According to Atwood, a Teamster was nearly killed this weekend after gunshots missed his head by inches.

Today Teamsters will begin picketing at what Atwood described as a brand new firm. Big Wheels, which is operating off Van Horn Road.

Another source said the firm has obtained an authority to operate a trucking venture.

Police ability to control picket sites is limited, they say. They must have a witness or reliable source to describe a lawbreaker. They cannot frisk at will, but must have someone attest that they have seen a particular individual carrying a concealed weapon.

Troopers did make a bust at one trucking firm site, when officers actually observed damage to a truck.

But it is the tone of the strike actions that seems to have heightened tension and increased the seriousness of actions in recent weeks.

Since being struck in late June, Odom management and employees have reported a string of violent acts to police: They say drivers have been struck with picket signs and had rocks thrown at them, trucks have been struck with pellet guns, dozens of tires have been flattened, invoices and checks were stolen from one truck, a Molotov cocktail was thrown through a foreman's home window, employees and customers have been threatened, and bulletholes were found in an overhead door at the warehouse.

Jay Dougherty, Odom's Fairbanks manager, carefully emphasizes he is not accusing the Teamsters of those acts.

"I'm concerned about it (violence) to the point where I don't want to see anybody hurt. I don't think it's worth anybody getting hurt over," Dougherty said in an interview.

Dougherty has hired private security help, as has Richard Gregory, president of Sourdough Express Inc.

There have been BB shots through windows and employees have been threatened at their homes, Gregory said, but the most serious incident has been slashed air-brake hoses.

"It's getting beyond the harassment point," Gregory said.

The situation at Drilling Mud Haulers culminated in a court order last week, in which Teamsters were ordered to reduce the number of picketers, and the company ordered to instruct its employees not to engage in inflammatory activity that might provoke picketers.

Friday night, a rig leased to Drilling Mud Haulers was destryed by fire. City fire inspector Eric Mohrmann said today he determined the cause to be of a suspicious origin, and the case has been turned over to city detectives.

Saturday morning, a truck loaded with fuel to be hauled for Northern Express was punctured in two places. Jim Dieringer, the firm's owner, estimates it will cost $5,000 to repair the tank, cover the loss of the fuel and the cost of clean-up.

Northern Express is not being struck by Teamsters, but Dieringer's had past brushes with the union. Although Dieringer doesn't have a contract with the union, some of the owner-operator truckers he has hired are Teamsters.

Dieringer doesn't put all the blame on local Teamsters. He said union leaders should take a stronger lead.

"That's the sad thing about it. There's a bunch of really, good qualified drivers letting themselves be led around by a few goons, and by not standing up for what they believe, they're letting those people speak for them," Dieringer said of the violence.

[From the Allegan, Mich., News & Gazette, Jan. 1, 1982]

JUDGE TIGHTENS RESTRICTIONS AGAINST PICKETS AT MURCO

(By Tom Hartzell)

In the wake of renewed violence and rowdiness near the Plainwell meat-packing firm of Murco Inc., Allegan County Circuit Court Judge George R. Corsiglia, Monday afternoon issued further restrictions on union picketing activities.

Members of Local 26, United Food and Commercial Workers International Union (AFL-CIO)—on strike against Murco since Oct. 14—have been picketing under a circuit court restraining order handed down Oct. 28.

Monday's amendments to that restraining order:

Reduced the number of picketers allowed at Murco plant entrances from 13 to four.

Demanded the relocation of a large woodpile, currently in front of the union's mobile strike headquarters (almost directly across the street from the Murco plant's main entrance on 11th Street), and its reduction in height to no more than two feet.

Ordered the turning of the strike headquarter's trailer so that none of its entrances faced 11th Street.

Directed that no more than four strikers may congregate outside within 1,000 yards of the Murco plant's main entrance.

Prohibited union members from following employees, vendors, or anyone having legitimate business with Murco and harassing or intimidating them.

In handing down these new restrictions, Judge Corsiglia found "there had been a continuing pattern of violence" at the Murco plant.

"It's gone on week after week after week," he noted, making conditions around Murco unsafe not only for Murco employees and for persons doing business with Murco, but also for the general public and strikers as well.

"I am well aware of—and the court is reticient to restrict—one's constitutional rights; however, based on what's been going on . . . some further restrictions are necessary," Judge Corsiglia said.

The latest amendments came in response to a two-day hearing initiated by Murco lawyers last week, during which they contended that the striker's headquarters and the woodpile in front of it were focal points for violent activity.

This activity, Murco lawyers claimed, included such minor offenses as shouting obscenities and making obscene gestures, and such major offenses as throwing "dangerous missiles."

Some of these missiles—frozen potatoes, marbles, ball bearings, split wood, iron spikes, and bottles—were presented as evidence at the hearing.

In addition, Murco lawyers presented testimony from several victims of this intimidation, some of whom said they had been cut by flying glass when vehicles moving along 11th Street were pelted.

The victims said the missiles that struck their vehicles were thrown by people hiding behind the woodpile in front of the union's mobile headquarters.

One victim said she even saw a bottle thrown by someone who immediately ducked into the strike headquarters to avoid detection.

Both the Allegan County Sheriff's Department (ACSD) and the Kalamazoo County Sheriff's Department (KCSD) presented thick files of complaints as evidence of violence, the KCSD file containing 119 complaints since Oct. 21.

Most of the complaints involved malicious destruction of property—particularly cars parked in the Murco plant's parking lot, but according to Lt. John W. Woods of the KCSD, 70 percent of the Murco incidents his department recorded occurred around union strike headquarters and woodpile.

Woods described the atmosphere there as "extremely intimidating."

Among witnesses testifying during the hearing were two members of the ASCD—Animal Control Officer Clyde Lee Smith, who is also a captain of the county's mounted division, and Sgt. Frederick Platteborze.

Smith and other so-called "posse personnel" (with the mounted division) have been working for Murco as a private security force, and it was Smith who produced most of the physical evidence of striker unrest—two boxes and one large envelope filled with a variety of missiles and shattered glass.

Platteborze, who presented Allegan County's incident reports, also told the court that he was struck in the back by a lead weight the morning of Dec. 17 while inspecting damage done to a posse member's motor home that was being used as a base for patrol activities at Murco.

He also testified that he once confronted union steward Donald Keech, of Local 26, with evidence that a vehicle had been shot at with some sort of weapon.

"Keech indicated from his attitude that the whole situation was funny," Platteborze said.

Keech later disputed this testimony on the witness stand.

Union lawyer John Foley of Vicksburg attempted to argue that Allegan County, by using the sheriff's posse as Murco Guards, was in violation of the state's Private Security Guard Act, adding that their presence was "an inflammatory factor," but Judge Corsiglia ruled this argument irrelevant.

Foley also attempted to involve the court in the question of whether or not Murco was committing unfair labor practices in violation of the National Labor Relations act, however, Judge Corsiglia ruled this line of questioning out of order, too.

Other points Foley made were:

That two of the more serious incident reports sheriffs' departments received—involving possession of weapons—involved Murco plant foremen rather than strikers.

That most of the incident reports for December were filed during a three-day span, Dec. 15-17, that came immediately after union members learned that Murco was willing to settle with them only for less than originally offered.

Foley termed the Dec. 15-17 period "an isolated outbreak," which is now under control and "will not happen again."

Moreover, he suggested that such hazards could be dealt with by shutting down the Murco plant altogether, rather than by piling more restrictions on strikers.

Judge Corsiglia obviously disagreed with most of Foley's arguments and warned that he would have no hesitancy in adopting even more restrictive measures if strikers continue violating his court orders.

United Steel Workers Held Liable for Strike Violence

Washington, D.C. January 21, 1982.—Nine employees of the Virginia Lime Company in Pearisburg, Virginia, have won $99,000 in damages from the United Steel Workers union for physical and verbal attacks they suffered while working during an 18-month strike.

The men were subjected to death threats, vandalism, shotgun attacks, and racial epithets and other obscenities the court called "vile and degrading." The case is expected to ultimately reach the United States Supreme Court on appeal.

An earlier case in the Supreme Court resulted in a ruling that the use of the word "scab" could only be considered as "robust debate" and not tending to violence and breach of the peace. The Pearisburg court, however, ruled that the words and actions used by the striking steelworkers were more obscene and insulting and were considered "fighting words."

The employees were represented in their suit by attorneys provided by the National Right to Work Legal Defense Foundation. The Foundation is an organizaton which provides free legal aid to employees whose rights are violated by compulsory unionism advisers.

Virginia Circuit Judge Kenneth I. Devore ruled that since the United Steel Worker of America and Local 14948 authorized the strike and provided funds for the strikers, an agency relationship existed that made them liable for the lawless actions of the picketers.

In addition, several individual strikers were held financially liable for their actions, including those who had hurled racial insults at black plaintiffs Raleigh Newby and Charles Eaves.

At the final hearing, Judge Devore commented that, as he read through the trial transcript to decide the amount of damages due the victims, he became more and more incensed at the vile language used by the strikers to harass the plaintiffs.

The National Right to Work Legal Defense Foundation, established in 1968, is a charitable organization. It provides free legal aid to workers whose rights have been violated as a result of compulsory unionism abuses.

[From the San Diego Union, Jan. 7, 1902]

La Costa's Roen Confirms Favors to Crime Figures

(By Rivian Taylor)

Compton.—Rancho La Costa board chairman Allard Roen yesterday acknowledged that he provided complimentary services at the resort to a handful of people with criminal records, some of whom had ties to organized crime.

However, Roen one of four principal owners of the resort, told a Superior Court jury that he had never given complimentary services to anyone with a "serious criminal record."

Roen testifying for the second day at La Costa's $490 million libel lawsuit against Penthouse Magazine, said he arranged free services for Louis "Lou the Tailor" Rosanova on two occasions. Rosanova was named in a 1963 U.S. Senate Crime Committee report as a "top chieftain in Cosa Nostra."

Under cross-examination by Penthouse attorney Norman Roy Grutman, Roen said he was unaware of Rosanova's reputation as a member of organized crime. Instead, Roen said he knew Rosanova "as a very fine golfer."

Later, Roen also testified that he consulted with Rosanova, who is a former executive director of the Teamster-owned Savannah (Georgia) Inn, about a problem with the greens at the La Costa golf course. Roen said Rosanova recommended a greenskeeper whom Roen subsequently hired.

Roen said he also arranged free services at La Costa for Sam Garfield, Rudy Tham and Yale Cohen, three men Roen said he knew had been convicted of crimes. Roen said he didn't know what their offenses had been.

Garfield, a former partner of Roen's whom he has known for 30 years, was a codefendant of Roen's in a stock fraud case in which both were convicted. Tham, a former San Francisco Teamster official, was convicted of embezzlement. Cohen was convicted of shooting a man, bribing a witness and larceny between 1933 and 1935.

Roen, who was originally one of the plaintiffs in the suit but removed because he is a public figure, admitted under cross-examination that he pleaded guilty to a felony charge in connection with the $5 million United Dye and Chemical stock fraud case in the early 1960s, which Penthouse lawyers said was the largest stock fraud case up to that time.

Los Angeles Superior Court Judge Kenneth Gale ruled that a copy of Roen's 1964 conviction in U.S. District Court in New York be allowed in as an exhibit, rejecting an objection by La Costa attorneys, who said it was "so remote (in time) to be irrelevant."

Gale responded, "There are other considerations; it will be received."

The document, which states that Roen "unlawfully, willfully and knowingly" conspired to violate various sections of Securities Act and to defraud the United States, will be given to the jury during deliberations.

At first, Roen said he wasn't sure when he entered the guilty plea, that he was pleading guilty to a felony, saying that he thought it could be a misdemeanor.

[From the Philadelphia Daily News, Jan. 8, 1982]

MOB FIGURES IN UNION HEALTH PLAN FRAUD

(By Frank Dougherty)

Several Philadelphia mob figures will be among those called into court soon in connection with an investigation into union health and welfare fraud a Pennsylvania Crime Commission official indicated yesterday—Commission Chairman Alvin B. Lewis said the indictment of six individuals on union health and welfare fraud charges is "imminent."

Lewis refused to name names, but a commission report, "Health Care Fraud: A Rising Threat," released here yesterday makes prominent mention of such reputed mob figures as Frank "Frankie Flowers" D'Alfonso, Harry "Hunchback" Riccobene and John "Long John" Martorano and his brother, Raymond.

The report also criticized Thomas Garvey, president of the local Fraternal Order of Police, and the FOP's contract with American Health Programs Inc., of Trevose, Bucks County.

Lewis acknowledged that investigators found no links between American Health and organized crime but the report criticized Garvey's involvement with a firm called Public Employees Consultants (PEC), which did $90,000 worth of business with American Health between April 1979 and February 1980. The report says Garvey was PEC's sole stockholder.

Garvey refused to testify in the Crime Commission's probe, citing his right against self-incrimination. But yesterday, Garvey defended himself to a reporter.

"The Commission built a bridge linking my labor consulting duties with the FOP presidency," said Garvey. "I wasn't president at that time, so I did nothing wrong." Garvey said the Police and Fire Medical Association approved the American Health contract.

The report used much stronger language, however, to describe two programs the commission contends are controlled outright by the mob—Labor Health Plans Inc. of Chicago and AMMA Health Center Inc., headquartered in a cigarette distribution warehouse at 2001 S. 29th St.

[From the Orlando Sentinel Star, Jan. 13, 1982]

BAD APPLES SPOIL IMAGE FOR UNIONS

(By Kenneth Michael)

The Teamsters and two or three other unions in the U.S. organized labor movement are like a few rough kids on the block who give the entire neighborhood a bad name.

Of the 102 national and international unions affiliated with the AFL-CIO, only two—the International Longshoremen's Association and the Laborers International Union—have been closely linked to organized crime and accused of being riddled with corruption.

Top officials of a third AFL-CIO union, the Hotel and Restaurant Employees and Bartenders International Union, have been tied to the crime syndicate. A few of its leaders have been sent to jail in the misuse of organization funds, although the scandals have not approached the levels of the other two AFL-CIO unions.

Florida, particularly South Florida, has experienced its share of union corruption and violence.

But even where the unions' national leadership is corrupt, the overwhelming majority of locals and their leaders are composed of hard-working family men untainted by crime.

There are about 500,000 elected union officials in the United States, but only a tiny fraction of them have been charged with a crime. Of the 75,000 union locals, the Justice Department estimates only 300, less than .05 percent, are crime-ridden.

Even the Teamsters union, which was kicked out of the AFL-CIO in 1958 because of corruption, is relatively free of mob influence on the local level. Fewer than 40 of the 800 Teamsters locals are dominated by criminal elements, according to government estimates. Almost all of the corrupt Teamsters locals are in major metropolitan areas.

As Ed Stephenson, president of the South Florida AFL-CIO, likes to point out, the record of bankers in the United States for embezzling is far worse than that of the unions.

"And how about price fixing and other white-collar crimes?" he asks.

However, there is little doubt that organized crime plays an important role in controlling the top level of the Teamsters, Longshoremen's and Laborers' International unions.

Former Teamsters presidents Dave Beck and Jimmy Hoffa served prison terms.

And current Teamsters president Roy Lee Williams, 66, who receives an annual salary of $225,000, is now under indictment on charges of trying to bribe Democratic Sen. Howard Cannon of Nevada in connection with a 1979 land deal.

Williams has also been identified by the FBI as being a close associate of Nick Civella, reputed Kansas City mob boss.

The list of other Teamsters higher-ups with connections to organized crime is lengthy.

Violence is not uncommon among the Teamsters.

Hoffa, who had been released from prison after serving three years in 1971 but who was barred by law for five years from holding union office, disappeared without a trace July 30, 1976, a few months before he would have been eligible to resume the union presidency.

The top Teamsters leader in the New York-New Jersey area, Anthony "Tony Pro" Provanzano, is serving a prison sentence for murder in another case.

And a major Teamsters scandal surrounds the handling of the $3 billion Central States, Southeast and Southwest area pension funds, which have been used to lend money to organized crime and to invest in joint ventures with shady figures.

Many of these loans and investments have turned sour and, as a result, the pension funds have suffered major losses.

Although no indictments resulted from the handling of that pension fund, Hoffa's successor as president, Frank Fitzsimmons, and 15 other pension fund trustees were sued by the United States in an attempt to recover tens of millions of dollars.

Control of the Central States fund was turned over to outside professionals in 1977, but Teamsters leaders will regain control of the fund next year.

Meanwhile, a reform movement has been gaining strength within the Teamsters. Members of the Professional Drivers Council have even grabbed control of several locals formerly held in the grasp of union racketeers.

While the Teamsters is the most notorious union, Laborers International is not far behind.

The Laborers are perhaps best known for the racketeering that went on during the construction of the Alaskan pipeline.

By the time that massive project was completed, many of the Laborers officials involved plucked that plump bird nearly clean. Some government officials estimate that thefts and corruption mounted into the tens of millions, even hundreds of millions of dollars.

In a June 1980 memo, the Justice Department termed Laborers president Angelo Fosco "a tool of the crime syndicate" and said that "major decisions regarding Laborers Union contracts are made by organized crime leaders, not Fosco."

The Fosco family has held leadership positions in the Laborers union for almost half a century. Angelo Fosco succeeded his father as union president in 1975. The elder Fosco was a close friend of the late Chicago mob overlord Paul "The Waiter" Ricca.

Angelo Fosco and the national head of the Hotel-Restaurant Employees union, Edward T. Hanley, have been listed by the Justice Department as close associates of

Chicago Mafia "underboss" Joey Auippa. The report said Aiuppa hand-picked Hanley for his union post.

The Teamsters have been involved in relatively few scandals in Florida, but a civil suit against the Florida Teamsters Fund in April 1978 raised more than a few eyebrows.

The suit filed by the Pension Benefit Guaranty Corp., a wholly owned federal corporation operated by the Labor Department to protect pension funds, asked return of $1.1 million that it alleged was embezzled from the Florida Teamsters Fund.

Among those named in the suit were Gopman and his law partners, Wuagneux and Sage Corp.

The suit also asked for damages resulting from negligence by the fund's trustees, including Walter Teague, head of the Georgia-Florida Conference of the Teamsters.

Another racketeering case involving Florida Teamsters cropped up last month when the vice president of Local 390 in Miami was accused of using extortion tactics, including putting "ghost workers" on othe payroll, during the filming of a movie and television commercials in South Florida.

The indictment against Vincent Marciaro said he used the names of dead men to falsify the trucking payrolls in the filming of the movie "Empire of the Ants," and in commercials for Oil of Olay, Ranch House restaurants and Levitz Furniture Co.

The indictment charged the producers were threatened with violence and economic loss unless ghost workers were put on the payroll.

The Miami indictment was similar to another that was handed down recently against Teamsters officials in the filming in Boston of the $12 million "Brink's Job" movie, which starred Peter Falk and was directed by Dino De Laurentis.

FBI agents are also reported to be investigating threats of violence by Tampa Teamsters against a producer who was filming a movie in St. Petersburg in 1979.

On the other hand, the Hotel-Restaurant Employees Union has been virtually scandal-free in Florida, although Hebert "Pinky" Schiffman, former president of the union's Local 355 in Miami Beach, was listed in a 1980 Justice Department report as "an associate of several Southern organized crime figures."

But one union that has enjoyed a generally good reputation nationally, the American Federation of State, County and Municipal Workers, underwent a serious scandal in Florida last September.

An audit of state AFSCME books showed that $300,000 was missing from the treasury.

Thomas J. Fitzpatrick has been suspended from his post as president of AFSCME in Florida by the national union.

The center of the scandal is Bernard G. Rubin, kingpin of the Laborers union in South Florida, who was sentenced to five years in prison in 1975 on 103 counts of tax evasion, racketeering and embezzlement of $385,000 in union funds.

Rubin is an international representative of the union, president of the South Florida council of the union, president of Local 666, business manager of Local 478 and a trustee of several of its health and welfare funds. Several of those organizations pay him a salary in addition to expenses.

Last June, Rubin and 15 others were indicted by a federal grand jury in the sharing of $2 million in kickbacks.

Among those indicted was Santo Trafficante Jr. of Tampa, who has more than a passing acquaintance with organized crime in Florida. It was the first time that Trafficante, 66, had been charged by the federal government with a felony.

In October, the FBI said Trafficante had met with a prominent Washington lawyer accused of soliciting a cash payoff for U.S. District Judge Alcee Hastings of Miami in exchange for a dismissal of the case. The lawyer, William A. Borders Jr., and Hastings were indicted last month on charges of soliciting bribes and obstruction of justice in another case.

Other familiar names on the June indictment include Angelo Fosco; his son, Paul; and Alfred Pilotto.

Also attracting the attention of students of the Florida labor racketeering scene in the indictment were the names of:

Anthony "Tony Betters" Accardo, one-time chauffeur and bodyguard for Al Capone, who is now acting head of the Chicago crime syndicate.

John Giardiello and Salvatore Tricaro, ranking leaders of the South Florida Laborers, who have been reported by the Justice Department to be associates of the late labor racketeer Johnny Dioguardi.

Seymour Gopman, a convicted embezzler, who was attorney for at least 40 Miami area unions and several of their pension funds before he was sent to prison.

James Pinckard, Pilotto's son-in-law.

Louis Ostrer, a notorious convicted originator of insurance schemes.

George Wuagneux, a frequent investor in questionable projects such as the now defunct Sage Corp., and who has been convicted of embezzling, racketeering and income tax charges.

Three months after being indicted in connection with racketeering in the kickback schemes, Fosco was re-elected Sept. 16 as national president of the Laborers in a 2,347-to-5 vote at the annual convention in Miami.

The Justice Department memo said the real decision-makers for the Laborers union are Aiuppa and two Chicago local union leaders with syndicate ties, Alfred Pilotto and Vincent Solano.

And for the Longshoremen, things have not improved much since the 1930s when crime family boss Anthony "Tough Tony" Anastasia ran the docks of New York City with an iron hand.

Anastasia's son-in-law, Anthony Scotto, an international vice president, is one of the key men on the docks today. In 1979, Scotto was convicted of extorting $225,000 from waterfront businessmen.

Between 1978 and 1980, about one-third of the Longshoremen's International union executive board was convicted of corrupt practices.

In Florida, almost all of the scandals in recent years have been in the southern part of the state.

At least six South Florida union leaders have been murdered in the last 10 years.

The biggest labor organization scandals in the state involve the Laborers union.

A few years ago, the normally scandal-free International Union of Operating Engineers got a black eye in South Florida when the local president, Richard Nell was sent to jail for five years for union racketeering, extortion and income tax evasion.

During Nell's reign at the local, heavy construction equipment was blown up and two policemen were hospitalized.

Nationwide attention was focused on the Miami waterfront two years ago with the exposure of a shakedown racket in the Southeast by officials of the Longshoremen's union.

Sentences of up to 15 years were handed out to 12 defendants who were convicted of receiving extortion payments from businessmen in the ports of Miami, Jacksonville, Mobile, Savannah and Charleston.

The federal trial in Miami was highlighted by the testimony of Joseph Teitelbaum, a Miami shipping company executive, who told of a 10-year series of kickbacks, payoffs and deals with union officials. During the investigation of the case. FBI agents thwarted at least two attempts by out-of-state killers to murder Teitelbaum.

Among those convicted in the Miami port shakedowns were:

George Barons, an ILA international vice president, who was part of the racket since the mid-1960s when he moved to Miami from New York City.

William Boyle, another ILA international vice president, who was the bagman for the union criminals in the five Southeastern ports.

Cleveland Turner, president of the Miami ILA local.

Fred Field, Jr., an ILA union organizer in Miami.

Vincent Flore, another Miami ILA organizer.

The Rev. Landon L. Williams, a Baptist minister, who is also president of the Jacksonville local.

Central Florida has remained free of union scandals although there has been scattered violence.

In 1973, Air Flow Designs Inc. of Casselberry was firebombed and 27 trucks were destroyed during a union organizing drive at the company. Daniel Evans organizer for the Plumbers and Pipefitters Local 803, and three others were found guilty and sentenced in the bombing.

The president of the Orlando-based Teamsters Local 385, Paul Parker, was sentenced three years ago to 10 years in federal prison for his involvement in a series of bombing of businesses in West Orange County.

Does corruption and violence harm organizing efforts of union?

The Teamsters' Georgia-Florida Conference head doesn't think so.

"The Teamster membership grew by leaps and bounds after the Teamsters were forced out of the AFL-CIO," says Teague.

"People understand that a lot of what they read and hear is propaganda used against our leadership," he says.

"But it's the bread and butter issues that interest people. What helps us to win union elections is when the people ask themselves, 'How do they take care of my job and my interests?' "

That opinion is shared by David Kornreich, a labor attorney who advises employers on union problems.

"I don't believe most elections are won by throwing stones at the unions," Kornreich says.

"I sometimes talk about the corruption, issue with employees because the employer wants me to, but about all I'm doing is massaging a clients ego," he says.

"When you talk about union violence, you just might by convincing an employee to think that 'this union is rough enough and tough enough to take care of me.' "

[From the California Laguna Hills, Jan. 13, 1981]

Farm Workers' Bus Attacked

Ventura police are investigating an attack Friday on a bus carrying workers to a Castle and Cook Inc. farm, allegedly by striking members of the United Farm Workers.

The union struck Castle and Cooke on Nov. 19 after contract negotiations broke down.

Police and company officials said an estimated 150 strikers pelted the bus with rocks and sticks as it pulled up to a mushroom plant and several people were injured by flying glass. One of those who received facial cuts was a hired guard riding on the bus.

UFW officials said that when the union contracts with the company expired Sept. 6 about 150 workers were laid off under a company plan to reduce operations. The company ties the cutbacks to a market slump.

Buses taking nonunion workers to the plant are to be escorted by sheriff's deputies this week.

[From the New York Village Voice, Jan. 20, 1982]

Cody Elected—and Indicted

On Tuesday afternoon, January 12, a Brooklyn federal grand jury handed down its indictment of John Cody, the president of Teamsters Local 282. The case file on Cody has been open for a long time, and the eight counts of his indictment concerned acts that took place as long ago as 1970. Taken together, these acts constituted what the government calls "a pattern of racketeering activity."

Cody was charged with:

Taking a $100,000 kickback in 1974 from John Strong, a Long Island real estate broker, as an inducement for the Local 282 pension and welfare fund to buy 819 acres of property near Riverhead. Another count involves a 1970 kickback of $60,000 paid to Cody by Strong and a second real estate man, Henry Norman, in connection with Local 282 fund's purchase of a golf course;

Extorting a variety of favors from employers of Local 282 drivers, including the rent-free use of an apartment at North Shore Towers, construction materials and labor for his opulent home in Southampton, and the services of three "working foremen" paid by contractors to chauffeur Cody and his henchmen;

Failing to report the bribes and kickbacks on his 1975 income tax return.

The morning after Cody was indicted, he surrendered, as arranged by Federal prosecutor Michael A. Guadagno and Cody's lawyers, to Agent Mary Jane Broca in the Brooklyn/Queens office of the FBI. A few hours later, he was arraigned before Judge Jacob Mishler at the new federal courthouse in Uniondale, Long Island, which, like many other buildings in the metropolitan area, was constructed of concrete, sand, and gravel hauled by the 5,000 truckdrivers who belong to Local 282—one of the most powerful unions in the region.

Judge Mishler knows Cody, who appeared in his court during the summer of 1978 to testify about another Local 282 pension fund loan which Cody had proposed to make to a notorious real estate speculator named Hyman Green. Cody then wanted the pension fund to lend $20 million to Green, in a complex deal which involved financing of a Las Vegas hotel and gambling casino. Once a close associate of Carlo Gambino, Cody apparently wanted to play with the big boys.

The only problem was that Hy Green had previously defaulted on $42 million worth of loans from Teamster pension funds; three of his associates had been indicted and convicted for bankruptcy fraud and perjury.

Thanks to pressure generated by Kenneth Crowe's articles in Newsday and dissidents in Local 282, the Labor Department brought suit under the Employee Retirement Income Security Act (ERISA). That lawsuit was the occasion of Cody's visit to Judge Mishler's court where, on August 11, 1978, the judge ordered the loan deal canceled. Mishler's historic decision was the first of its kind under ERISA, and a warning to swindlers which Cody didn't heed (see "John Cody, the Mega-Mafia, and the Teamsters," Voice, May 13-19).

Last Wednesday, the judge let Cody leave the courthouse on personal recognizance bail of $50,000, secured by another house he owns in Seaford, Long Island.

Exactly five weeks before John Cody's arraignment, on December 6, 1981, he and the other incumbent officers of Local 282 were reelected by the union's members to another three-year term. It was a blustery Sunday, the end of a hard-fought campaign between Cody's gang and a slate of dissident candidates led by Ted Katsaros, who co-chairs the national reform movement known as Teamsters for a Democractic Union. The Local 282 affiliate of TDU is known as FORE, which stands for Fear of Reprisal Ends.

Katsaros and the other leaders of FORE—Larry and Walter Kudla, John Kuebler, Charlie Curd—have led a seven-year battle to rid their union of corruption. They exposed the pension-fund scams, the collusive deals with employers, the waste of hard-earned dues. They suffered reprisals, from the loss of their jobs and seniority to midnight threats and assaults at union meetings. In 1975, they ran against Cody and lost by a two-to-one margin. In 1978—after considerable publicity crowned by a segment on CBS's 60 minutes—they ran again and won 46 per cent of the vote. Last month, with little publicity other than a story in Newsday, and a turnout of about half the membership, they were swamped.

The election, which I observed, was held at two polling places: The Sheraton LaGuardia motor inn, and a union hall in Melville, Long Island. Like the election in 1978, this one was marred by some 70 Cody goons milling around the polls, giving out coffee, booze, campaign buttons, and scurrilous material about TDU and Katsaros.

But perhaps more damaging to the FORE slate than the atmosphere of intimidation on election day was the fear Cody's lieutenants instilled in the members during weeks of campaigning. Posters put up by the hundreds around construction sites carried the slogan. "A Tough Industry Needs a Strong Administration." The subliminal message: corrupt men are needed to make deals in a corrupt industry. Or, as the wife of one FORE member put it the night of the election, "They're the mafia, and the mafia runs this country. You can forget about changing it."

In their mimeographed newsletters, the FORE unionists have tried to change both the union and the minds of their brother and sister members. But the members of Local 282 must have believed that FORE's charges were untrue because Cody hadn't been indicted. Or that Cody was simply too powerful for even the combined forces of the FBI, the Labor Department, the Internal Revenue Service, and the Eastern District Force.

They were wrong, and it may be too late to save their union.

[From the Baton Rouge Morning Advocate, Jan. 27, 1982]

GRAND JURIES SET MEETINGS

Sessions of the regular federal grand jury and an extended grand jury are scheduled this week at the U.S. Courthouse.

The newly empaneled grand jury, which took office earlier this month, will be meeting Wednesday to take up some old matters and some new matters, U.S. Attorney Stanford O. Bardwell, Jr. said.

The extended grand jury, which has been investigating thefts of soybean-laden barges along the lower Mississippi River, will be back in session Thursday continuing that probe, Bardwell said.

Last week, a grand jury completed a preliminary investigation into allegations that members of Teamsters Local No. 5 and Local 100, a city-parish affiliate of the union, were solicited for funds to pay for legal defense of ex-business agent Edward Grady Partin. Partin is now serving an eight-year federal penitentiary term for conspiring to obstruct justice.

Bardwell said no evaluation of the preliminary grand jury investigation has yet been made by his office and unless some clarification is needed from one of more than the half dozen witnesses who have already testified, he does not anticipate the calling of union members by Wednesday's grand jury.

The U.S. attorney has indicated a decision will be made on whether to expand the probe of the union activities after the preliminary investigation has been evaluated by his staff.

UNION CORRUPTION MOVES CENTER STAGE

(By Donald Lambro)

WASHINGTON.—Labor Secretary Ray Donovan hit the roof when Utah Sen. Orrin Hatch in a private letter demanded "direct access to primary documents" covering years of departmental investigations into corrupt union practices.

This last-ditch attempt on Dec. 17 to break the impasse Donovan and his top aides had constructed to prevent Hatch's Labor Committee from raiding the department's secret files struck a raw nerve in the labor secretary.

Enraged at the aggressiveness of the committee's determined investigators, Donovan angrily told Hatch, "I don't see how I can deal with you."

Within the last few weeks, however, an uneasy compromise has been reached, as the result of Hatch's persistent efforts to pull buried documents out of the department in preparation for the committee's hearings. It will be the first substantive investigation on union abuses since the famous McClellan hearings of the 1950s on labor racketeering.

Hatch's predecessor, Sen. Harrison Williams, D-N.J., never lifted a finger to probe corruption which thrives among labor unions. Under Hatch's chairmanship, Williams' attitude, for now at least, is in the minority.

As revealed by the Senate Permanent Investigations Subcommittee hearings into how the Labor Department bungled its investigation of the Teamsters Central States Pension Fund, the department has, in past years, been a cesspool of mismanagement and shady dealings.

The subcommittee's explosive report in 1981 concluded that the department's "actions going back many years and many administrations proclaim in clear language that it remains incapable of investigating major labor racketeering cases."

The aim of Hatch's hearings, to begin in mid-February, will be to go beyond the Teamsters case. They will attempt to find out who is to blame for the department's failure to seek criminal prosecution of crooked labor bosses and the mob elements who prey upon the hard-earned benefit funds of union members.

Much of the bottleneck has been in the department's Solicitor's Office where Carter administration holdovers—such as former United Mine Workers official Monica Gallagher, who remains associate solicitor for the Division of Plan Benefits Security—are blamed by Senate investigators for throttling prosecutable cases. Hatch wants to know why one year into the Reagan administration these same people are still in key positions of responsibility.

The Labor Department's chief constituency has always been organized labor. Thus it comes as no surprise that big labor wants to get rid of one of the few members of the Senate who want to investigate it.

Last week, Glenn Watts, president of the Communications Workers of America, joined Democratic Party strategists in declaring that Hatch will be a prime target for defeat this November when he faces re-election. Organized labor "will spend all of the money we can get our hands on" to remove Hatch from office, Watts said.

There are, of course, other Senators who deplore corrupt labor unions, but few possess Hatch's appetite for taking on big labor. Widely credited with beating back the AFL-CIO's power grab in its ill-fated "labor law reform" bill, Hatch has the courage and wits to conduct the kind of housecleaning the Labor Department and labor unions have needed for more than 20 years.

What if Hatch is defeated this fall?

One Hatch ally in the Senate warns that "if Orrin should lose, Teddy Kennedy (the panel's ranking Democrat) would virtually dominate the committee, because no one can stand up to him like Orrin."

With Hatch gone, many believe the investigation into labor would end.

Meanwhile, the pressure on Hatch to go easy on his labor hearings and water down his demands for departmental documents has been intense. But despite little encouragement from the White House, the Utah conservative says he isn't backing down.

Hatch's hearings will begin with a tough examination of the Solicitior's Office, now headed by T. Timothy Ryan, a labor relations lawyer who supported George Bush in the 1980 presidential campaign.

The investigations Subcommittee probe into the Teamsters pension fund focused on the Solicitor's Office under the Carter administration. Its report concluded that the department's "chance to investigate and prosecute some of the nation's most notorious criminals was wasted." Moreover, the inquiry uncovered "bureaucratic infighting and naivete or incompetence" at the highest levels.

Next month, Hatch will ask why things haven't significantly improved at the Labor Department's Solicitor's Office.

[From the Cleveland Plain Dealer, Jan. 30, 1982]

KICKBACK FIGURE INDICTED IN LOS ANGELES

Harry Haler, 62, the ex-convict who says he was a conduit for alleged kickbacks of $300,000 to Teamster leader Jackie Presser, was indicted in U.S. District Court in Los Angeles yesterday for wire fraud.

The indictment involved land transactions Haler had with two men who immigrated from Ethiopia to California 35 years ago.

Haler testified before a federal grand jury here Jan. 13 about his financial dealings with Presser in the early 1970s. He told Plain Dealer reporters last year that he or two associates delivered cash monthly over a 1½-year period to Presser.

In a deposition in a civil case filed in Los Angeles in 1977, Haler stated the funds were provided by Hoover-Gorin & Associates Inc., a public relations firm there. He said he was instrumental in getting Hoover-Gorin a $1.3. million annual contract with the Teasmsters beginning in 1972 because of is friendship with Presser and his father, the late William E. Presser

Haler managed Hoover-Gorin's Los Angeles office from 1972 through part of 1975.

[From the Cleveland Plain Dealer, Jan. 30, 1982]

RULING KEEPS LIBERATORE AT LIBERTY

Anthony Liberatore, the Cleveland organized crime figure convicted of bribing an FBI clerk, will remain free on $500,000 bond until the U.S. Court of Appeals (6th Circuit) decides whether to reconsider his appeal.

U.S. District Judge William K. Thomas yesterday deferred a ruling on a Justice Department request that Liberatore's appeal bond be revoked. The appeals court early this month upheld Liberatore's 1980 bribery conviction.

Liberatore, reputed Cleveland Mafia boss James Licavoli and others will be tried in March on federal charges of violating the Organized Crime Control Act in the bombing deaths of Daniel J. Greene and former Teamsters Union official John A. Nardi.

Since his bribery conviction, Liberatore has retained his job as business manager of Laborers International Local 860.

The government argued yesterday that Liberatore, who was once a fugitive and on the FBI's most-wanted list, may flee to avoid his 12-year prison sentence.

Thomas said a hearing on the government's motion will be held within seven days following any appeals court ruling unfavorable to Liberatore

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[From the Beaumont, Tex., Enterprise Feb. 2, 1982]

JUDGE BLASTS VIOLENCE AT DISPUTE SITE

(By Margaret Toal)

ORANGE.—Violence in a labor dispute at Project Managers, Inc. in Rose City will not be condoned, 128th District Judge Pat Clark said Monday, also criticizing a Rose City marshal who testified he didn't make an arrest after witnessing a criminal act.

Clark made the remarks in a brief speech after announcing he would take under advisement a motion to modify a temporary court order against Pipefitters Local 195 in connection with the dispute.

Clark met with attorneys for PMI and the pipefitters for nearly an hour Monday, trying to work out an agreement between the two parties before court testimony began for the second day in the hearing..

After the hearing, Clark said he "was shocked and appalled to sit here Friday to hear a deputy marshal here say he hasn't upheld the law."

He was referring to Ben Davis of Rose City who testified he had seen a man known only as "Doug" kick a car but didn't arrest him because of a volatile situation with the crowd. Davis also testified he never filed charges against the man and never learned the man's complete name or took his license number.

Clark said he has heard "complaints from both sides" about law enforcement at the site.

"I do expect the law and the injunction to be enforced," he said, referring to the order prohibiting violence, obscene language and the blocking of streets at the site.

He said he is "completely and totally disappointed nothing has been worked out" between the two sides.

Clark also lashed out against rumors in the community and said he didn't set the original hearing date for the motion; PMI did, he said.

"I'm sick and tired of comments being made by people who don't know what they're talking about," Clark said.

On Friday, Clark recessed the hearing at 7 p.m. after nearly five hours of testimony concerning violence and intimidation at PMI, whose officials contend pipefitters are gathering at the plant, throwing rocks and yelling obscenities at employees and customers. The plant is presently shut down.

During about 30 minutes of testimony Monday, Wayne Reaud of Beaumont, attorney for the pipefitters, said he wants to take a PMI employee before an Orange County grand jury to face perjury charges in connection with testimony given Friday about brakelines being disconnected in a tractor-trailer rig.

David Michael Borghase, a PMI employee who lives outside of Beaumont, said Friday that in mid-January, the service line on the brakes of his rig were disconnected while the rig was parked outside of his home one night.

He also testified he had seen a car leaving his driveway that night at a high rate of speed, and he had seen the car at the PMI picket site.

Reaud called as a witness Monday Earl Ray Cochran, 63, of Beaumont, a teamsters union member and a truck driver for 30 years. Cochran said that if a service line is disconnected on a truck and there is no pressure, a safety system with a buzzer would alarm the driver before he drove the rig.

Borghase testified he discovered the disconnected line after he tried to stop at a traffic sign.

On questioning from James Weber of Beaumont, an attorney for PMI, Cochran said a trailer could be pulled on a tractor without any brakes if the brakes hadn't been hooked up.

Reaud said Borghase' testimony was perjured because, Reaud contended, the incident never happened and was made Friday "to prejudice this case."

In closing arguments, Weber said the piperfitters "have caused significant intimidation and harassment at the PMI site," not only to employees and customers of the company, but also to nearby residents.

[From the Tarrytown, N.Y., News, Feb. 4, 1982]

KATONAH UNION LEADER JAILED FOR PAYOFFS

Union leader Daniel Pagano of Katonah has been sentenced to two years in federal prison for taking $10,000 in payoffs for labor peace at a nonunion construction site in Manhattan.

Judge George Pratt pronounced sentence Tuesday in federal court on Long Island on Pagano's guilty plea of last Nov. 19.

In a plea bargain, Pagano, 34, business manager of Laborer Local 59, avoided prosecution for two counts of labor racketeering, which carry a possible 20-year sentence.

Pagano and seven others, including Theodore Maritas, president of the 30,000-member District Council of Carpenters, were indicted last March as a result of an FBI investigation called "L'il Rex," an acronym for Long Island Labor Racketeering and Extortion.

Maritas, whose trial ended in a hung jury, awaits a new trial in April.

[From the New York Times, Feb. 14, 1982]

EX-UNIONIST LEADS A COAL COMPANY IN BITTER DISPUTE WITH MINERS' UNION

(By Ben A. Franklin)

BOKOSHE, OKLA., February 11.—On one side of a bitter 11-month stalemate here are 160 striking members of the United Mine Workers of America. On the other side is a coal company whose uncompromising chief negotiator is about to draw his pension—from the coal union.

Until less than three years ago Don Lawley, a 35-year member of the union, represented the Oklahoma-Arkansas coalfields on the mine workers' executive board. Then he was hired as director of labor-management relations for the Gariand Coal and Mining Company, a strip mine operator.

"I've got to make a living," he said.

Mr. Lawley, 55 years old, said in an interview in his office at the company's headquarters in nearby Fort Smith, Ark., that his employer would not sign the three-year contract that most unionized coal operators agreed to last June, ending a 72-day national strike.

VOTE TO DECERTIFY POSSIBLE

And despite a sometimes violent struggle here and at Gariand's two other strip mines at Stigler and Tamaha, Okla., the union appears unlikely to win back its position, which means more to it than just the 160 jobs at stake here in the Arkoma Basin, where most of the coalfields are nonunion.

Next month, a year after the expiration of the last U.M.W. contract, Gariand's new nonunion employees would be eligible under Federal labor law to decertify the union if a petition to the National Labor Relations Board called for such an election. Union officials expect such a vote to be requested and conducted. The strikers now picketing the mine 24 hours a day would not be able to vote.

If Gariand Coal can continue shipping coal with a nonunion work force while it refuses to accept a union contract "it will give them all the idea that this union can be beat," said a union official.

The company objects to a provision that requires it to make royalty payments to the union's pension plan based on tonnage, a system that Gariand and many other mine operators regard as wasteful and more costly than the retirement plans available to individual operators from insurance companies. In the last year before the strike began, Gariand paid $720,000 into the plan, Mr. Lawley said.

COMPANIES OPPOSE PENSION PLAN

The major companies in the coal industy tried to shed the pension plan in the national negotiations last year, and they are expected to try again in the next round of contract talks in 1984.

In the view of labor specialists, a union defeat here would also underline a growing phenomenon, the rise to corporate power of younger, union-resisting heirs to entrepreneurs who had made peace with the miners' union and other labor groups.

"Here, it is the younger generation," said Harrison Combs, the union's 71-year-old general counsel, referring to the opposition to the pension plan of J. F. Porter 3d, 45, who succeeded his father as president and board chairman of Gariand Coal.

In 1956, when Mr. Porter's father was running the company, the union obtained control of enough stock in the electric power company to which Gariand then sold its coal to require Gariand to accept the union if it wished to keep its utility sales.

The younger Mr. Porter has refused to meet top union leaders, forcing them to deal with Mr. Lawley, who says, "We are not out to break the union." He said he would sign a contract—without the pension plan.

From his perspective as a retired union executive, he said he blamed the union for "failing to organize this area when we pled with them to do it," thus leaving Gariand at a competitive disadvantage with nonunion operators.

NEGOTIATIONS INTERMITTENT

Rich Trumka, a young miner and lawyer sent here by Sam M. Church Jr., the union president, to negotiate with Mr. Lawley, conceded that there were "union mistakes here." But he said that the pension exclusion proposal "is a union-busting idea."

Mr. Lawley has also said that Gariand will not remove its nonunion workers to rehire the strikers. Negotiations have been intermittent and, so far, unproductive.

Both the Gariand bargaining meetings and the quarterly session of the union's executive board, which Mr. Church convened at the Fort Smith (Ark.) Ramada Inn this week as a show of support for the strikers, have been given a political coloration by the fact that Mr. Trumka, 32, is challenging Mr. Church, 45, for the union's presidency in an election to be held in November.

Wednesday both men led a busload of executive board members to a muddy picket line headquarters beside a trailer here. "It's a shame we can't have the two of them," said Cleo Hocott, one of the pickets. "They're both good men."

For Mr. Trumka, the assignment has been double-edged. Complicating his campaign, Mr. Trumka is posted far from most of the union's members in the Middle West and Appalachia. But the dispute also has the potential to grab headlines for the young and little-known challenger.

OPERATIONS BRIEFLY HALTED

The U.M.W. Journal, the union publication that Mr. Church controls, reported that in December Mr. Trumka and other members of his union negotiating team here were the targets of four shotgun blasts as they drove near the picketed Gariand mine at Stigler. They were uninjured.

The dispute has led to the scattering of nails along Gariand Coal's truck routes, a practice that Mr. Lawley said "means 50 tire changes before lunch on some days," and the short-circuiting with lengths of chain of the company's high-voltage overhead power lines. Late last year a court ordered the Gariand mines closed as "a riot area," but after two days the Oklahoma Supreme Court reversed the order.

Gariand Coal is sparing little in its fight. When the union won a government order to audit the company's books to study Gariand's contention that it could not afford to support the pension plan, it discovered that in less than a year the company had spent $2.5 million on armed security guards. The company is also paying thousands of dollars for truck tires and up to $8,000 a month to restore electric service when the power lines are sabotaged. It appears willing to keep paying.

[From the Seattle Times, Feb. 18, 1982]

UNION ORDERED TO PAY FIRM FOR "DIRTY TRICKS" DURING TRUCKING STRIKE

(By Carey Quan Gelernter)

A King County Superior Court jury yesterday decided a Teamsters local must pay a company $581,793 because it failed to supervise union members' "dirty tricks" against the firm during a strike.

The unanimous verdict ordered Teamsters Local 174 and Teamsters Joint Council 28 to pay the Taylor-Edwards Warehouse & Transfer Co. Inc.

Taylor-Edwards, a family-owned warehouse and trucking business, had asked for $1 million in its suit. But the company lawyer, Ken McMullin, said the firm was pleased with the award.

Rod Schmidt, business agent for the Teamsters local, said the union would make no comment other than it would appeal the verdict.

The Teamsters struck Taylor-Edwards in January 1980 and the strike lasted a year, after which members returned and a new contract was negotiated shortly afterward.

During the strike, McMullin contended, union members repeatedly punctured tires and radiators, strewed nails under trucks and harassed substitute employees on highways and at the company.

"We said they were negligent in supervising the strike . . . and that business agents had participated in these things as well, aiding and abetting," McMullin said.

David E. Taylor Jr., son of the owner and an employee in the firm, said the damage amount was based on costs Taylor-Edwards had to pay for guard dogs, extra security and to make up for loss of business suffered when clients became intimidated and harassed by illegal-strike activity.

McMullin said the case was probably "one of the very few" of its kind, and he knew of no others in the state in which a union was held accountable for its members' actions during a strike.

"One in a while, someone might get out of line and we're not talking about that," he said. "We're talking about patterns of violence.

"I think this will have a positive effect," McMullin said. "In the future, we'll begin to see unions take a more forceful approach to controlling their members during strikes—the sabotage, the dirty tricks."

By Thomas R. Haggard*

Labor Violence: The Inadequate Response of the Federal Anti-Extortion Statutes©

I. INTRODUCTION

Of all kinds of human conduct, physical violence against person or property is undoubtedly the one which receives almost universal condemnation among civilized peoples. Even the fiercest of the classical liberals and modern libertarians, who view government's function very narrowly, recognize both the propriety and the necessity of state sanctions against aggression. Indeed, this may even be viewed as the *only* truly essential function of government, the nonperformance of which divests a corporated body of any legitimate claims to be our political sovereign. The state's control of violence is, in short, a very important matter.

Labor violence, however, has long been a major problem in this country. Perhaps the earliest reported instance of labor violence occurred in 1799 in connection with a strike among the cordwainers of Philadelphia. It involved numerous acts of misconduct, including the throwing of a tack-studded potato through a shop window, barely missing the head of the proprietor who had hired a "scab"[1]—a quaint but lethal way of making a point! The fifty-year period between 1880 and 1930 was especially marked by acts of violence commited in connection with the many strikes and lockouts of that era, which often took on the dimensions of "small wars."[2] In one two-year period, 1902-04, approximately 200 people were reported killed and over 2,000 injured in acts of labor violence.[3]

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[1] Nelles, *The First American Labor Case*, 41 Yale L.J. 165, 176 (1931).

[2] *See generally* J. Brecher, Strike! (1972); S. Lens, The Labor Wars (1973); Taft & Ross, *American Labor Violence: Its Causes, Character, and Outcome*, in The History of Violence in America 281-395 (1969).

[3] National Commission on the Causes and Prevention of Violence, Violence in America 288-89 (1969).

Although the days of company "armies" and the Molly McGuires[4] are thankfully gone, acts of violence continue to occur in labor disputes in this country. No hard data exists concerning the current scope and origin of this violence. It would appear, however, that when management opposition to unionization does go beyond the bounds permitted by law, it consists mainly of economic reprisals against union sympathizers,[5] although physical violence by management officials does occur occasionally.[6]

Violence appears to be a more extensive problem for the House of Labor. In some instances, it undoubtedly represents the "semi-official" policy of a labor union, a deliberate and all too effective tool for bargaining or organizing. In other instances, the official dereliction consists merely of a more-or-less passive indifference to the use of violence by rank-and-file members, including the failure by union leaders to take steps to prevent and correct these "unauthorized" acts. Also, there are still other instances of individual worker violence committed in open defiance of official and genuine union prohibitions against it. This conduct is of as much concern to responsible labor leaders as it is to the victims themselves.

At first glance it would appear that the law has responded fully and adequately to the problem of labor union violence. Such conduct is actionable under both the criminal[7] and the civil laws of every state,[8] and stiff penalties and high damage awards are certainly possible.[9] In addition, the federal Labor Management Relations Act regards such violence as an unfair labor practice.[10] Although the use of injunctions is prohibited in the context of most labor disputes, the statutes seem to recognize an exception with respect to violence.[11] Furthermore, there are numerous other statutes, both state[12] and federal,[13] which either specifically or generally include labor violence within their ambit, or which have the potential of doing so.[14]

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[4] The Molly McGuires, the name of a group whose *formal* existence is a matter of some historical dispute, is generally used to refer to the Irish miners who engaged in widespread acts of violence, sabotage and murder in the eastern Pennsylvania coal fields during the bitter strikes of the 1870's. *See generally* S. LENS, *supra* note 2, at 11-35.

[5] This kind of conduct, of course, constitutes an unfair labor practice. Labor Management Relations Act §§ 8(a)(1), (a)(3), 29 U.S.C. §§ 158(a)(1), (a)(3) (1976).

[6] The section 8(a)(1) prohibition against employer interference, restraint, or coercion of employees in the exercise of their statutory rights is certainly broad enough to also encompass acts of physical violence or intimidation. *See, e.g.*, Jacques Syl Knitwear, Inc., 247 N.L.R.B. No. 191 (1980). In 1979, however, only nine violations of this kind were found by the National Labor Relations Board.

[7] Such things as assault and battery, riot, burnings, and trespass against land and chattels, all of which can easily occur within the context of a labor dispute, are routinely prohibited by the criminal codes of the various states. *See, e.g.*, S.C. CODE §§ 16-3-620, -5-70 to -140, -11-120 (1976).

[8] *See* Comment, *Tort Liability of Labor Unions for Picket Line Assaults*, 10 U. MICH. J.L. REF. 517 (1977).

[9] *See, e.g.*, Pipeliners Local 798 v. Ellerd, 503 F.2d 1193 (10th Cir. 1974); C.E. Thurston & Sons, Inc. v. Barber, 78 L.R.R.M. 2719 (M.D.N.C. 1971).

Despite the plethora of state and federal laws which potentially touch on the matter, the problem of labor union violence seems to persist. Even with due recognition that the law can never be expected to eradicate completely man's tendency toward aggression or to always provide a full measure of justice to its victims, the uneasy feeling remains that the law does not address the problem of labor union violence with the vigor that it should. The attitude seems to be that "boys will be boys;" that a certain amount of "animal exuberance"[15] is to be expected in the emotionally supercharged atmosphere of a labor dispute; and that, while this is to be regretted, the law should not over-react.[16]

This attitude can be seen in all three branches of government.

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[10] Labor Management Relations Act § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1976); Local 30, United Slate, Tile & Composition Roofers, 227 N.L.R.B. 1444 (1977); Union de Operadores y Conteros de la Industria del Cemento de Ponce, 231 N.L.R.B. 171 (1977); Teamsters Local 695, 204 N.L.R.B. 866 (1973).

[11] Norris-LaGuardia Act §§ 3(e), 3(i), 29 U.S.C. §§ 104(e), (i) (1976).

[12] *See, e.g.*, S.C. CODE § 41-7-70 (1976).

[13] The Hobbs Act, 18 U.S.C. § 1951 (1976), which is the subject of this article, represents the primary attempt of Congress to deal with the *specific* problem of labor violence. The Labor Management Relations Act has a broader scope and direction.

[14] *See, e.g.*, 18 U.S.C. § 241 (1976), prohibiting conspiracies to injure persons in the exercise of their federal rights. In United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974), the court held, however, that this statute did not apply to violence by union officials against employees who were attempting to exercise their federal statutory right of refusing to participate in certain union activities. The court conceded that a violation *literally* existed, but went on to ask: "Can Congress have intended the consequences of such improper, but nevertheless not uncommon acts, to be up to ten years in prison, or a $10,000 fine, or both? The thought does more than give one pause; it brings one to a halt, and to a further, more careful look at the Government's position." *Id.* at 211.

[15] Under the so-called "Thayer Doctrine," an employee who has been fired for engaging in conduct so designated is, despite the otherwise unprotected nature of the conduct, entitled to reinstatement if the employer has engaged in unfair labor practices which are *theoretically* assumed to have provoked such exuberance. The Board only draws the line where "the misconduct is so flagrant or egregious as to require subordination of the employee's protected rights [*sic*] in order to vindicate the broader interests of society as a whole." W.C. McQuaide, Inc., 220 N.L.R.B. 593, 594 (1975), *modified in other respects*, 522 F.2d 519 (3d Cir. 1977).

[16] *See* United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974).

Prosecution under the criminal statutes, especially at the state and local level, is reportedly lax in certain jurisdictions, perhaps because of the political sensitivity of the issue. Moreover, where vigorous attempts have been made to enforce these statutes against labor union violence, the administrative agencies and courts have often either construed the statutes so narrowly as to make them virtually worthless, or have judicially excluded labor violence from their coverage altogether. In addition, legislatures, especially Congress, have seemed either unable or unwilling to write statutes prohibiting labor violence with that degree of specificity that is apparently necessary in order to insure judicial and administrative enforcement.

In many respects, the federal anti-extortion statutes are an ideal microcosm of the problems that exist generally with respect to the law's response to labor violence. In particular, the history of these statutes and the cases construing them are an excellent example of the kind of legislative point and judicial counterpoint that has left the law in a virtual stalemate. Currently, as a part of the overall revision of the federal criminal code, the anti-extortion sections are being revised and their scope and applicability to labor union violence is again being hotly debated.[17] One cannot, however, fully appreciate the probable effect of the proposed changes except by reference to what has transpired before. The purpose of this article, thus, is to replow some ground that is concededly old in the hope that this may shed some useful light on the current controversy.

II. THE ANTI-RACKETEERING ACT OF 1934

A. The Legislative History

The original federal anti-extortion statute, known as the Anti-Racketeering Act,[18] was one of several bills that came out of the extensive investigations of "racketeering" conducted in 1933 by the Copeland Committee, a special subcommittee of the Senate Committee on Interstate Commerce.

As introduced in the Senate,[19] this bill did not specifically include or exclude the activities of labor unions. However, the Senate Report stated that "[t]he provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering."[20]

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[17] *See generally* § IV of text *infra*.

[18] Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).

[19] S. 2248, 73d Cong., 2d Sess. (1934), 78 Cong. Rec. 457 (1934).

[20] S. Rep. No. 532, 73d Cong., 2d Sess. 2 (1934).

The report also stated that at that time "the nearest approach to prosecution of racketeers as such has been under the Sherman Antitrust Act."[21] However, it noted the limitations of that Act, as construed by the courts, in addressing this particular kind of abusive behavior. It is problematic, of course, whether framers of the Senate bill had in mind any of the cases in which the Supreme Court had found the Sherman Act to be inapplicable to various forms of strike violence.[22]

In any event, it is clear that S. 2248 was intended to go beyond the limitations of the Sherman Act in dealing with the problems of "racketeering" and violence in interstate commerce. It did this by separately prohibiting four things, as they would affect interstate commerce: (1) acts of violence, intimidation, or injury to person or property, or threats thereof; (2) extortion of money or other valuable consideration; (3) coercion of persons to join associations or make payments thereto; and (4) coercion of persons in the exercise of their rights to do or not to do as they choose.

This version of the bill passed the Senate with little or no debate. Moreover, it appears that the bill had been sent to the House before organized labor awoke to the possible implications insofar as labor activities were concerned. Senator Robinson, in belatedly requesting a reconsideration, stated: "Representatives of the American Federation of Labor informed me this afternoon that both bills [S. 2248 and a bill dealing with extortion by phone] might be very discriminatory against labor in this country, and that they wanted to be heard respecting them."[23]

It is not altogether clear why the AFL thought the bill was "discrimatory" or unfair to them. It seems unlikely that they believed that labor unions are simply entitled to a *blanket* exemption from the normal prohibitions against physical violence and extortion. In all probability labor feared that the historically elusive term "coercion" might be construed broadly to encompass, in addition to overt violence, the traditional labor activities of strikes and picketing, especially when such activities were directed at compelling an employer to recognize the union, to pay union wages, and to stop hiring non-union labor.[24] These objectives would certainly seem to be encompassed by the third and fourth provisions of the bill as summarized above. Moreover, strikes to obtain these objectives had been held to be beyond the reach of the Sherman Act, and organized labor knew that the bill was intended to expand that reach in some unspecified fashion. Thus, the fears of the AFL may not have been totally unwarranted.

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[21] *Id.* at 1.

[22] *See, e.g.*, United Leather Workers v. Herkert & Meisel Trunk Co., 265 U.S. 457 (1924); United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

[23] 78 CONG. REC. 5859 (1934).

[24] Under certain forms of the "conspiracy doctrine," labor activities could be considered actionable or, in legal contemplation, "coercive" if either the ends or the means were impermissible. Thus, non-violent strikes to obtain a closed shop could be enjoined in some cases. *E.g.*, Plant v. Woods, 176 Mass. 492 (1900); *see* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 21-24 (1977). Organized labor, which had vigorously and more-or-less

The House was apparently receptive to whatever fears labor had concerning S. 2248. When the bill was reported out of committee,[25] it had been rewritten so as to prohibit (1) the use of force, violence, or coercion to obtain or attempt to obtain money or other valuable consideration, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee";[26] (2) the wrongful use of force to obtain the property of another without his consent; (3) conduct in furtherance of a plan or purpose to otherwise violate the Act; and (4) conspiracies to engage in conduct otherwise prohibited by the Act. A final proviso to the Act also stated "[t]hat no court of the United States shall construe or apply any of the provisions of this act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."[27]

The House Report, quoting a letter from the Attorney General, noted that

> The original bill was susceptible to the objection that it might include within its prohibition the legitimate and bona fide activities of employers and employees. As the purpose of the legislation is not to interfere with such legitimate activities but rather to set up severe penalties for racketeering by violence, extortion, or coercion, which affects interstate commerce, it seems advisable to definitely exclude such legitimate activities.[28]

Assured that the new bill had the complete approval of organized labor,[29] the House and the Senate passed the Act without further debate.

Despite the effort of Congress to direct the focus of the Act *toward* organized crime and *away from* organized labor, some of the first indictments under the Act were brought against labor union officials. Thus, it soon became necessary for the courts to clarify

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successfully opposed the "conspiracy doctrine" in other contexts, may have feared its resurrection in the form of this federal criminal law.

[25] 78 CONG. REC. 11402-03 (1934).

[26] *Id.* at 11403.

[27] *Id.*

[28] H.R. REP. No. 1833, 73d Cong., 2d Sess. 2 (1934).

[29] 78 CONG. REC. 11462 (1934) (remarks of Sen. Copeland).

the scope of the labor exemption. One such case ultimately wound its way to the Supreme Court.

B. The Case Law

In *United States* v. *Local 807, International Brotherhood of Teamsters*,[30] members of the union met trucks as they came into New York City and used threats and violence to obtain from the owners of these trucks the equivalent of a day's wage for driving and unloading the trucks within the city. In some instances the defendant unionists did in fact perform *some* work for which they nevertheless obtained *full* payment. In others, the owners paid the money but rejected the offers of the defendants to do the driving and unloading. There were also instances in which the defendants apparently either failed to offer to do the work or refused to do any work when asked.

The issue in *Local 807* boiled down to whether the unionists were using force to obtain "*wages* by a bona-fide employer to a bona-fide employee,"[31] thus bringing the events within the Act's exception in that regard. Although the *Local 807* case involved a now repealed portion of the Act, what the courts said in this case is important in evaluating the significance of the congressional repudiation of this interpretation, and in determining meaning of the Act as presently written.[32]

A number of competing interpretations were proffered in the opinions of both the court of appeals and the Supreme Court. However, the interpretation that was the most obvious and the most reasonable was dismissed out of hand by the court of appeals. Speaking of the exception, the court noted that "[t]heoretically it might indeed apply only to situations in which an employee procured by threats the payment of wages due under a contract which the employer had made without coercion."[33] In other words, a bona fide or uncoerced employment relationship must exist before the exception is even applicable.

Presumably, the unstated predicate of this interpretation was that actual physical violence can never really be considered a legitimate and bona fide labor union activity, insofar as the final proviso to the Act is concerned,[34] and that the specific exemption with respect to wages should, therefore, be narrowly construed. Limiting the exception to violence used by a real employee to obtain the wages that are legitimately due him recognizes the general prohibition against violence, and at the same time, gives some meaning to the express words of the statute. Moreover, it makes sense to read the statute as recognizing a distinction between the use of force to obtain something that one is not entitled to without the consent of the other party (a wage contract), and the use of force to obtain something that one is actually entitled to (wages due under a previously consented to contract); the former but not the latter falls within the general meaning of the term "extortion,"[35] which was apparently the central concern of Congress in passing the act.

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[30] 118 F.2d 684 (2d Cir. 1941), *aff'd*, 315 U.S. 521 (1942).

[31] Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).

[32] For discussion of the Congressional repudiation of *Local 807* and the current version of the Act, see § III-A of text *infra*.

[33] 118 F.2d at 686.

[34] *See* note 27 & accompanying text *supra*.

Nevertheless, the court had two objections to that interpretation. First, the court felt that there was no real distinction between using coercion to obtain a contract for wages, and using coercion to obtain the wages owed under an otherwise noncoerced contract. The court, however, was simply wrong in that regard; but the court's willingness to indulge in patently fallacious reasoning to reach that desired result is probably more important than the logical fallacy itself.[36]

More importantly, the court of appeals felt that the suggested interpretation would make the exception too narrow. The court noted that the exception was clearly intended to cover "labor disputes," that "[p]ractically always the crux of a labor dispute is who shall get the job and what the terms shall be," and that "[t]o confine the exception to cases where the original contract was voluntary would therefore leave out the great mass of instances in which the issue would ever arise."[37] This, however, simply begs the question of whether, with respect to the use of actual physical violence in contrast to the use of economic power, Congress intended the exemption to be narrow or broad.

In any event, the court of appeals obviously had to give the term "bona fide" some other meaning to avoid this particular interpretation. Accordingly, the majority held that the requirement of "bona fides" was not met and thus, the exception did not apply where the money was paid on a "pretext of service never in fact rendered."[38] Conversely, the exception was said to apply whenever the "employee really did the work for which he was paid."[39] However, the majority immediately expanded the exception to include payments made to a person who offered to do the work but whose offer was refused by the person being coerced to make the payments. It was on this specific point that the dissent parted company with remainder of the court.[40] The court noted that while it might be difficult to call such payments "wages," it would nevertheless be nonsensical to assume that Congress wanted to grant immunity to one who used coercion to the point of actually getting the job, but, at the same time, penalize another who did *not* persist "in pressing his unwelcome services upon the employer."[41] The court noted that this would "excuse the more heinous offense, and penalize the more venial."[42]

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[35] The common definition of criminal extortion is as follows: "Extortion is a crime when . . . any person extorts that which is not due, or more than is due, or before the time when it is due." BLACK'S LAW DICTIONARY 525 (5th ed. 1979).

[36] In order to demonstrate that there was no distinction between the two, the court noted that "if any employer is coerced into making a contract, the coercion ordinarily persists until the wages fall due, so that it is proper to speak of them as being 'obtained' by the original threats, or violence . . . ." 118 F.2d at 686. While that assertion may well be true, the converse cannot be inferred, namely that if the wages due are obtained through coercion, this necessarily means that the original contract was obtained in like fashion. Nevertheless, this is what would have to be inferred in order to be consistent with the court's notion that the statute recognized no distinction between these two uses of force.

[37] 118 F.2d at 686.

The majority also felt that interpreting "bona fides," to include any coercively obtained payments as long as work was performed or tendered was justified by reference to the evil that Congress intended to suppress by this Act. The court noted that what Congress had in mind was the "blackmail" that "organized gangs of bandits" had levied upon many small businessmen, especially in New York City.[43] Labor violence, *aimed at the legitimate objectives of obtaining jobs and higher wages*, was said to be an altogether different matter. The court noted:

> Congress might indeed have gone further than it did; it might have included payments extorted by threats for services rendered or offered; that too is a grave evil. But, grave as it is, it is of a different kind from that at which this act was aimed. The history of labor disputes is studded with violence which unhappily is not yet obsolete; but, although the *means* employed may be the same as those here condemned, the *end* is always different, for it is to secure work on better terms.[44]

This notion that the "legitimacy" of the *ends* somehow takes otherwise violent *means* outside the prohibitions of the statute has proved to be persistently appealing insofar as the courts are concerned. Although Congress expressly repudiated the Supreme Court decision which affirmed and restated this idea,[45] the theory was subsequently to reappear. Remarkably, it today represents the prevailing interpretation of the amended statute.[46]

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[38] *Id.*
[39] *Id.*
[40] *Id.* at 690 (Hand, J., dissenting).
[41] 118 F.2d at 687.
[42] *Id.*
[43] *Id.* at 688.
[44] *Id.* (emphasis added).
[45] *See* § III-A of text *infra*.

On appeal the Supreme Court again couched the issue in *Local 807* in terms of finding a correct construction of the wage proviso, and suggested three alternative interpretations. The Court first considered the possibility that "[t]he exception applies only to a defendant who has enjoyed the status of a bona fide employee prior to the time at which he obtains or attempts to obtain the payment of money by the owner."[47] Presumably, this interpretation had been considered and rejected by the court below. The Supreme Court rejected it, in part for the same reason—such a reading would allegedly exclude practically all labor disputes from the exemption, a result which the Court found incompatible with the probable intent of Congress. In addition, the Court found this interpretation inconsistent with the literal wording of the statute. The statute "does not except 'a *bona-fide employee* who obtains . . . wages from a bona-fide employer.' Rather, it excepts '*any person* who . . . obtains . . . the payment of wages from a bona-fide employer to a bona fide employee.' "[48] This is simply a disingenuous distortion of the suggested interpretation. The distinction underlying the interpretation focuses not on *who* uses coercion but *for whom* it is used. Coercion would be within the exception only when the person for whom it is used has an otherwise uncoerced employment relationship under which wages are owed.

The second possible interpretation considered by the Court was that the exception "does not apply if the owner's intention in making the payment is to buy 'protection' and not to buy service, even though the defendant may intend to perform the service or may actually perform it."[49] This was apparently the interpretation argued for by the government. However, the Supreme Court rejected it on the ground that the state of mind of the victim could not properly be decisive of the guilt of the defendant. The Court made it quite obvious that it viewed the exception as clearly contemplating the use of violence in labor disputes, as long as it was for a "legitimate" end.

> For example, the members of a labor union may decide that they are entitled to the jobs in their trade in a particular area. They may agree to attempt to obtain contracts to do the work at the union wage scale. They may obtain the contracts, do the work, and receive the money. Certainly Congress intended that these activities should be excepted from the prohibitions of this particular Act, even though the agreement may have contemplated the use of violence. But it is always an open question whether the employers' capitulation to the demands of the union is

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[46] *See* notes 152-53 & accompanying text *infra*.

[47] 315 U.S. at 527-28.

[48] *Id.* at 531.

[49] *Id.* at 528.

> prompted by a desire to obtain services or to avoid further injury or both. To make a fine or prison sentence for the union and its members contingent upon a finding by the jury that one motive or the other dominated the employers' decision would be a distortion of the legislative purpose.[50]

Given later developments in Congress and before the courts, one cannot overemphasize the critical importance of this language. It *clearly* suggests that, in the Supreme Court's view, the first principle of the statute was that it was not intended to apply to violence aimed at attaining traditional labor goals. The victim's state of mind was rejected by the Court as a relevant consideration *only* because its use might operate in derogation of that principle. Since the instructions of the trial judge to the jury had suggested the controlling importance of the victim's intentions in paying the money, the Supreme Court necessarily found that the conviction had to be set aside, and it, therefore, affirmed the court of appeals.

Finally, the Court discussed a third possible interpretation over which the court of appeals was divided—namely, whether the trial judge erred in suggesting that payments for work not actually done could never be considered "wages," notwithstanding the defendants' willingness to do the work. In this regard, the Court noted that both the majority and the dissent below had agreed that the payment of money to one who refuses to do any work is clearly not within the exception, but that payments to one who actually does the work clearly is within the exception. The Court apparently concurred with that view and stated that "[t]he doubtful case arises where the defendants agree to tender their services in good faith to an employer and to work if he accepts their offer, but agree further . . . that he should pay an amount equivalent to the prevailing union wage even if he rejects their proffered services."[51] The Court resolved the doubt in favor of finding such payments to be "wages" for the purposes of the statute.

The Court said that in determining whether the exemption applied or not, "[t]he test must . . . be whether the particular activity was among or is akin to labor union activities with which Congress must be taken to have been familiar when this measure was enacted."[52] Referring to the so-called "'stand-by' orchestra device, by which a union local requires that its members be substituted for visiting musicians, or, if the producer or conductor insists upon using his own musicians, that the members of the local be paid the sums which they would have earned had they performed,"[53] the Court concluded that the practice of accepting payments even when the services are refused was within the contemplation of Congress and, therefore, within the exemption.

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[50] *Id.* at 532-33.

[51] *Id.* at 534.

[52] *Id.* at 535.

[53] *Id.*

The Court's holding on this point provides even further evidence of its preoccupation with the notion that if the objective is a traditionally legitimate one from labor's perspective, then conduct aimed at obtaining it does not constitute "extortion," no matter how violent it is. This, in sum, seems to be the recurring theme of the *Local 807* decision.

Chief Justice Stone registered a strong dissent in the case. His dissent is important because many in Congress later referred to it expressly as evidencing the proper approach to the problem of labor extortion. Unfortunately, it is difficult to pinpoint exactly where in the analysis the Chief Justice parted company with his brethren. In his view the elements of an offense under the Act were: The defendants used force to compel the payment of money; these payments were made to purchase immunity from violence and for no other reason; and this end was knowingly sought by the defendants. With respect to the specific facts of the *Local 807* case, Chief Justice Stone clearly believed that illegal extortion occurs when an employer is forced to make payments for work not done, even when it is the employer himself who has elected not to use the services of an otherwise willing worker. He noted that "[u]nless the language of the statute is to be disregarded, one who has rejected the proffered service and pays money only in order to purchase immunity from violence is not a bona fide employer and is not paying the extorted money as wages."[54]

Moreover, the Chief Justice believed that the performance of some work did not necessarily bring forced payments within the exception. He cited with approval an instruction by the trial judge which stated that "[i]f . . . what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of the operator's trucks, the fact that a defendant may have done some work on an operator's truck is not conclusive."[55] Furthermore, he noted that "[t]he character of what the drivers or owners did and intended to do—pay money to avoid a beating—was not altered by the willingness of the payee to accept as wages for services rendered what he in fact intentionally exacted from the driver or owner as the purchase price of immunity from assault, and what he intended so to exact whether the proffered services were accepted or not."[56]

On the other hand, the Chief Justice did concede that "the procuring of jobs by violence is not within the Act . . . ." and that this may include "the 'stand-by' job where no actual service is rendered . . . ."[57]

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[54] *Id.* at 540 (Stone, C.J., dissenting).

[55] *Id.* at 542.

[56] *Id.* at 540.

What one may synthesize from these various assertions is that, from Chief Justice Stone's perspective, the critical issue was what constituted the "essential purpose" of the transaction. If the "essential purpose" of the transaction is to exchange money in return for work done (or for someone being available to work, as in a "stand-by" situation), there is no violation of the statute even if violence is used to accomplish the transaction. On the other hand, if the "essential purpose" of the transaction is to exchange money in return for freedom from violence, a violation does exist even if work is done or offered to be performed. However, the Chief Justice did not suggest specific, objective indicia that can be used in identifying such purposes. He conceded, rather, that this is ultimately to be determined by a jury by reference to the perceived intent of the two parties. Since the instructions of the trial judge were consistent with Justice Stone's interpretation of the law, he believed that the convictions should stand.

The *Local 807* case virtually emasculated the Anti-Racketeering Act of 1934 insofar as its effectiveness as a tool against labor violence was concerned. Whether the case was consistent with the original legislative intent is hard to tell, given the obscurity and brevity of the legislative history on the issue. The intent of Congress sitting at the time the case was decided is, however, a different matter.

III. THE HOBBS ACT AMENDMENTS

A. Legislative History

Congressional reaction to the *Local 807* case was as swift as it was negative. Bills were introduced in the 77th,[58] 78th,[59] and ultimately the 79th Congress[60] to correct what Congress considered to be an outrageous decision. The legislative solution that ultimately prevailed, the so-called Hobbs Act,[61] was originally introduced in the 1943 session.[62] It passed the House that year,[63] but died in the Senate. It was reintroduced the following year and finally enacted into law.[64]

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[57] *Id.* at 541.

[58] S. 2347, 77th Cong., 2d Sess. (1942); H.R. 6872, 77th Cong., 2d Sess. (1942); H.R. 7067, 77th Cong., 2d Sess. (1942).

[59] H.R. 653, 78th Cong., 1st Sess., 89 CONG. REC. 3218 (1943).

[60] H.R. 32, 79th Cong., 1st Sess. (1945), becoming Hobbs Act §§ 1-6, 18 U.S.C. § 1951 (1976).

[61] 18 U.S.C. § 1951 (1976).

[62] *See* note 59 *supra*.

[63] The debates in the House on H.R. 653 were fairly extensive and are as much a legitimate source of legislative history from which probable legislative intent

Fearful that *any* repetition of the exact language of the 1934 Anti-Racketeering Act would give the Supreme Court an excuse for adhering to the *Local 807* approach, Congress completely rewrote the law and took special pains to eliminate the specific language on which the decision was based. The new Act provided that:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.[65]

The terms "robbery," "extortion," and "commerce" were defined, and the final paragraph of the Act, the exact wording of which produced much debate, provided that "[t]his section shall not be construed to repeal, modify or affect" the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, or the National Labor Relations Act.[66] Notably absent was anything akin to the wage exception of the 1934 Act. Indeed, an amendment again exempting "wages" from the coverage of the Hobbs Act was rejected on the specific grounds that this would simply open the door to another *Local 807* decision.[67]

The legislative history makes absolutely clear that Congress viewed the *Local 807* case as wrongly decided.[68] Thus, the Hobbs Act was *at least* written to require a contrary result on those identical facts, but how much beyond that Congress intended to go is a matter of speculation.

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may be deduced as are the debates on the identical bill in the following session. United States v. Enmons, 410 U.S. 396, 404 n.14 (1973).

[64] After passing the House in independent form, 91 Cong. Rec. 11922 (1945), the substance of the Hobbs Act was also incorporated into the Case Bill, H.R. 4908, 79th Cong., 2d Sess. (1945), which passed Congress but which was vetoed by President Truman, 92 Cong. Rec. 674 (1946). Immediately after the veto, the Senate took up and passed the Hobbs Act as previously approved in independent form by the House, 92 Cong. Rec. 7308 (1946), thus making it law in spite of the veto. *See generally* Comment, *Labor Law—A New Federal Antiracketeering Law*, 35 Geo. L.J. 362 (1947); Comment, *The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act*, 25 N.C. L. Rev. 58 (1946).

[65] 18 U.S.C. § 1951 (1976).

[66] *Id.*

[67] 91 Cong. Rec. 11913-19 (1945). Speaking of the *Local 807* case, Congressman Sumners also said: "It was the purpose of the Judiciary Committee to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated." *Id.* at 11909.

[68] Congressman Hancock called the *Local 807* case "a gross misinterpretation of the law and a distortion of the intent of Congress." 91 Cong. Rec. 11900 (1945). *See also* 88 Cong. Rec. 2071, 5334-35 (1942); 89 Cong. Rec. 3193, 3201, 3202, 3206-07, 3220 (1943).

To determine what impact the Hobbs Act was intended to have upon various kinds of violent labor union activity, one can conveniently break the legislative history down into five categories: (1) Congressional interpretations of the holding and the dissent in the *Local 807* case; (2) specific examples of the kinds of conduct the new Act was intended to reach; (3) interpretations of the "no repeal" proviso and the suggested alternative; (4) the basis of labor's opposition and the congressional responses thereto; and (5) the assertions of no intended "discrimination" for or against labor.

1. Interpretations of the Local 807 *Case*

Generally speaking, Congress read the *Local 807* case very broadly. The sponsor of one of the first bills introduced on the matter said the case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence in enforcing demands so long as such force and violence are practiced by members of labor organizations and unions."[69] Similarly, it was said that the case holds "in effect that the use of force and violence was not incompatible to the lawful settlement of disputes between employers and employees."[70] In the debates on the Hobbs Act as introduced the first time, one congressman said: "I think the intent of the Congress in the 1934 statute was to protect the lawful activities of organized labor. The construction put on it by the Supreme Court would authorize unlawful acts—certainly never intended by this Congress."[71]

In these and other instances the concern of Congress seemed to focus on the fact that the *Local 807* case allowed labor unions to use physical violence to enforce their demands against employers. It was, apparently, of no particular moment that in the *Local 807* case the demands specifically involved payments for unwanted, if not unused, labor. Assuming that the Hobbs Act was intended as a negation of a broad reading of the *Local 807* case, it follows that Congress intended to prohibit the use of all violence in the enforcement of labor union demands regardless of the particular nature of the demands.

On the other hand, a somewhat narrower interpretation of the *Local 807* case is reflected in the comments of Congressman Hancock, a proponent of the Hobbs Act. "[T]he Supreme Court," he said, "held that . . . members of Teamsters Union 807 in New York City were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a job *whether they rendered any services or not*."[72] This suggests that the objectionable aspect of the *Local 807* case that was being legislatively overruled pertained not to the permitted use of violence alone, but to its use to achieve that particular result. Consequently, an intent to negate that aspect of *Local 807* would not support an inference that Congress intended to prohibit *all* forcibly backed union demands.

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[69] 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman).

[70] *Id.* at 5334-35.

[71] 89 CONG. REC. 3202 (1943) (remarks of Rep. Gwynne).

Perhaps the clearest indication of what Congress intended by its repudiation of *Local 807* can be found in the fact that the dissenting opinion of Chief Justice Stone was repeatedly referred to in approving terms.[73] Indeed, at one point Congressman Whittington expressly stated that "[t]he real purpose of the bill is to remove any doubt about the interpretation of the act by the Chief Justice being correct."[74] Unfortunately, as has been seen, Mr. Justice Stone's opinion is somewhat obscure as to the Act's prohibition against violence in the labor context.[75]

2. *Specific Examples of Prohibited Conduct*

The examples given of the kind of union conduct the new Act was designed to reach are much more helpful than are interpretations of *Local 807* in assessing the legislative intent. The facts of the *Local 807* case were, of course, cited time and time again as being prototypical of the kind of abusive labor conduct Congress wanted to reach through the Hobbs Act,[76] but other examples were also given. Congressman Anderson spoke of where the Teamsters used force in connection with a demand that drivers entering San Francisco either become members of the union or use Teamster drivers while within the city.[77] He also spoke of the situation where, in support of an organizational drive among dairy employees, a Teamsters Union refused to haul the dairy farmers' milk into the city, resulting in considerable spoilage.[78] This was considered an act of "coercion" in the colloquial sense, and one which the proposed Act was intended to reach.[79]

Congressman Baldwin of Maryland cited the example of a strike in Baltimore where sabotage and other acts of violence had been directed against the employer and his property:

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[72] 91 CONG. REC. 11900 (1945) (emphasis added).
[73] *See, e.g.*, 88 CONG. REC. 2071 (1942); 89 CONG. REC. 3206, 3210, 3217 (1943).
[74] 89 CONG. REC. 3221 (1943).
[75] *See* text accompanying notes 54-57 *supra*.
[76] *See* note 68 *supra*.
[77] 91 CONG. REC. 11904 (1945).
[78] *Id.*
[79] *Id.*

> This bill would not have been presented to the House if organized labor had recognized law and order in striking and in establishing their rights, *as they have a right to do.* Everyone can remember the taxicab strike in the city of Baltimore, . . . where cabs were overthrown, bricks thrown through the windows endangering the lives of people, innocent victims.
>
> . . . .
>
> Mr. Chairman, labor has a right to strike, but when labor perpetrates that sort of thing, they are going far beyond the bounds of reason. Certainly, I do not take the position that labor has not the right to organize or to strike, but when they do so they should abide by the . . . laws of decency. If they had done that, we would not have this legislation before the House today.[80]

Thus, it is relatively clear that these members of Congress intended the Hobbs Act to prohibit forms of labor violence other than the kind of "featherbedding" practices that were at issue in *Local 807.* It appears that the proposed Act was also intended to prohibit the use of violence and coercion to obtain otherwise legitimate objectives such as the organization of employees, membership in the union, the acquisition of work for union members, or a favorable collective bargaining agreement.

3. Debate Over the "No Repeal" Proviso

As drafted by Congressman Hobbs, the bill simply said that the four leading labor laws then in existence were not to be considered repealed, modified, or affected by the new legislation. Congressman Celler, however, proposed and strenously argued for an amendment which would have provided that "no acts, conduct, or activities which are lawful under [the four acts in question] . . . shall constitute a violation of this act."[81] Congressman Celler felt that as drafted the exception to the bill would *not* protect labor in the exercise of rights guaranteed by the other statutes; the "no repeal" language, he conceded, would continue to protect the exercise of those rights from prosecution *under the former statutes*, but not necessarily from prosecution *under the proposed Hobbs Act.*[82]

Congressman Celler's interpretation of the language was not a reasonable one. Language of this kind would normally be construed to mean that if any of the four labor statutes grant labor unions an affirmative right to engage in a particular kind of conduct, the Hobbs Act should not be construed as taking that right away. However, it was repeatedly pointed out that none of the four acts gave unions the affirmative right to engage in any acts of force and violence prohibited by the Hobbs Act.[83]

On the other hand, Congressman Celler's version of the exception would have seriously limited the scope of the Act insofar as labor union activities were concerned. It is reasonably apparent from his explanations of the proposed amendment that he construed the term "lawful" to mean "not illegal."[84] Saying that certain conduct is "not illegal" under a specific statute, as per Celler's version, is vastly different from saying that the statute makes such conduct a matter of "right." The Clayton Act,[85] for example, did not give labor unions an affirmative "right" to use force in the settlement of strikes; but the use of such force had also been held to be "not illegal" under that statute.[86] Arguably, under the Celler amendment it would not be subject to prosecution under the Hobbs Act either.[87] Thus, some labor leaders privately conceded that the Celler amendment would have nullified the Hobbs Act altogether, at least insofar as labor activities were concerned.[88] If an act was not already illegal under one of the four statutes, the Hobbs Act simply would not cover it.

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[80] *Id.* at 11918 (1945) (emphasis added).

[81] 89 CONG. REC. 3220 (1943).

[82] *Id.*

[83] *Id.* at 3193, 3202.

Congressman Hobbs opposed the Celler amendment on slightly different grounds. He feared that if certain things which are generally "lawful" under the labor statutes were declared to be beyond the purview of the Hobbs Act, it would be construed as also excluding the pursuit of these "lawful" ends by "unlawful" means.[89] He said,

> Mr. Chairman, almost any crime may be committed while the perpetrator is engaged in otherwise lawful acts, conduct or activities.
>
> . . . Because a man is engaged in the perfectly lawful conduct of striking, is he guiltless if he commits rape?
>
> Picketing is lawful. But does that mean that a picket cannot be punished for stealing?
>
> The right of collective bargaining is guaranteed by law. Does that give collective bargainers the right to murder?
>
> . . . .
>
> Honestly and peaceably seeking employment is not only lawful, but commendable. However, it is equally lawful for one from whom employment is sought to refuse it. Does any sane and reasonable man contend that the right honestly and peacefully to seek employment gives the seeker the right to force employment or to beat the refuser?
>
> . . . .
>
> I submit that for these reasons the Celler amendment is dangerous, especially in view of the decision in the Local 807 case, which held that no matter how much violence might accompany a request for employment it

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[84] *See id.* at 3220.

[85] 15 U.S.C. §§ 12-27 (1974).

[86] *See, e.g.*, Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940) (Court held that labor union activity that was illegal under local law could be legal under the Sherman Antitrust Act).

[87] *See* 89 CONG. REC. 3202 (1943) (remarks of Congressman Gwynne).

[88] *Id.* at 3203, 3224 (remarks of Rep. Baldwin).

[89] *Id.* at 3194-95, 3220-21 (remarks of Rep. Hobbs).

> was all right and you are perfectly innocent under the antiracketeering law. The same thing is true here. No matter what may be said about the Celler amendment, it still does not require, as do the acts to which it points, that lawful acts, conduct or activities must be done in a lawful and peaceful way. Without that or something like that the amendment should be defeated.[90]

The relevance and importance of this language used by the author of the Hobbs Act cannot be emphasized too strongly. In slightly different terms, what Congressman Hobbs was saying was that the fact that the objective or *end* is legitimate under one of the general labor statutes does not mean that such objective can be pursued by violent *means*. Rightly or wrongly, Congressman Hobbs feared that the Celler amendment would have that effect insofar as prosecutions under the proposed anti-extortion statute were concerned. Necessarily, Congressman Hobbs also believed that the statute as he drafted it did *not* have that effect. The Celler amendment was defeated.[91]

4. Objections to the Hobbs Act and the Responses

It is significant to note that, on a substantive level, the opposition to the Act was *not* grounded on the fact that it was to be a violation of federal criminal law for labor unions to use actual physical violence in furtherance of their organizational or collective bargaining objectives. The substantive objection, rather, was that the Act might be construed in such a way as to *also* preclude unions from pursuing these legitimate goals by the traditional methods of peaceful strikes and picketing. Congressman Celler, for example, noted:

> There are courts which have held that whenever workers seek to bring about a wage increase or other adjustment of their working conditions by a strike, however peacefully conducted, they are attempting to "force" their employer to grant the wage increase or grant the requested adjustment of their working conditions.[92]

He also feared that even a mere demand for a wage increase might be construed as an implied promise to strike if it were not granted, thus making it an illegal "threat."[93] Congressman Celler, concerned that the Hobbs Act might be similarly construed, also noted that "there are courts which have held that picketing, *however peacefully conducted*, is by its very nature an attempt to force the employer into action which he is not willing to take."[94]

Similarly, Congressman LaFollette said of the terms of the Act that: "I think they are broad enough to cover a discussion between employees as to whether or not they shall join a union. Those things are often accompanied by heated discussions which might be called coercion and they would affect the right of labor to organize."[95]

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[90] *Id.* at 3220-21.

[91] *Id.* at 3225.

[92] 91 CONG. REC. 11901 (1945).

[93] *Id.*

[94] *Id.* (emphasis added).

The proponents of the bill, however, consistently denied these charges. It is important to note that the basis of their denial was *not* that the ends being sought in these examples were legitimate ones, thus putting the means being used to achieve them beyond the purview of the Act. Instead, they answered that *otherwise peaceful* strikes and picketing are not acts of force or violence; such acts are specifically protected by federal statute and could not, thus, be considered a violation of the Hobbs Act. This point was made repeatedly. Congressman Hancock, in responding specifically to the claims of Congressman Celler, said: "A moment ago the gentleman said the threat of a strike came within the definition of extortion. This bill merely prohibits the wrongful use of force or threats. That cannot apply to a threatened strike because strikes are lawful, they are not wrongful."[96] Similarly, in giving a negative response to the question of whether a threat to go on strike would constitute a violation under the proposed bill, Congressman Sumners said, "as I . . . understand this bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, unless somebody thinks it is legitimate for them to rob and extort."[97]

That robbery and extortion were intended to connote acts of physical violence is also evident in Congressman Gwynne's listing of what the government would have to prove in order to obtain a conviction under the statute—namely, that the conduct affects interstate commerce, that there be an actual taking of property, *and* that this be done "by violence, by personal violence, or by actual threats of personal violence."[98] Likewise, Congressman Fellows noted that "the so-called Hobbs bill is designed to make assault and battery and highway robbery unpopular. Its purpose is to protect trade and commerce [which would certainly include the negotiation of collective labor agreements and most other labor-related activities] against interference by violence, threats, coercion, or intimidation."[99]

Congressman Savage was concerned about the Act's effect on a

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[95] *Id.* at 11920.
[96] *Id.* at 11902.
[97] *Id.* at 11908.
[98] *Id.* at 11903.
[99] *Id.* at 11907.

"strike for better working conditions."[100] A response by Congressman Barden distinguished a *peaceful* strike from the type of activity the Act was designed to prohibit. Focusing on the means used to accomplish the ends sought, he said:

> Do not talk to me about the man on strike. If he were an honest gentleman, he would not commit such offenses as robbery or extortion while on strike or off strike.
>
> . . . The fact that a man is on strike certainly does not license him to be an outlaw. . . .
>
> Good honest men do not commit robbery. They do not commit burglary. They do not beat up innocent people. They do not extort money. Good honest men do not do those things.[101]

A few moments later Congressman Michener said that "this bill will not interfere with legitimate strikes"[102]—presumably referring to strikes which are both peaceful and directed toward an otherwise legal end.

Congressman LaFollette also shared the fears of labor that the proposed Hobbs Act might be construed too broadly. Nevertheless, he did agree that the use of force or violence, *even if it was to obtain wages*, should be clearly prohibited. Thus, he proposed an amendment to that effect and said:

> If we put a construction into this statute which states that a bona fide payment of wages from an employer to an employee *shall not include wages* or the transfer of a thing of value *which is obtained by violence* or the threat of use of violence, then we reach the situation we are attempting to reach . . . .[103]

The amendment was rejected presumably because the *Local 807* case caused the majority to avoid the "bona fide wages" language altogether and, instead, couch the prohibitions of the statute in even broader language. It would, however, be incongruous indeed to *now* construe the Act as not reaching as far as even its opponents were willing to go.[104]

On the other hand, the most commonly cited indication that the Act was *not* designed to reach *mere* strike violence is contained in the following exchange:

> Mr. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves—
>
> Mr. HOBBS. The gentleman needs go no further. This bill does not cover strikes or any question relating to strikes.

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[100] *Id.* at 11841 (remarks of Rep. Savage).

[101] *Id.* (remarks of Rep. Barden).

[102] *Id.* at 11843 (remarks of Rep. Michener).

[103] *Id.* at 11846 (remarks of Rep. LaFollette) (emphasis added).

[104] Nevertheless, such a result was, in effect, reached by the Supreme Court in United States v. Enmons, 410 U.S. 396 (1973), where the Court held that the use of violence to obtain a more favorable collective bargaining agreement (covering, among other things, the payment of wages) was not within the prohibitions of the Hobbs Act. *See* text accompanying notes 166-200 *infra*.

> Mr. MARCANTONIO. Will the gentleman put a provision in the bill stating so?
>
> Mr. HOBBS. We do not have to, because a strike is perfectly lawful and has been so described by the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.
>
> Mr. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?
>
> Mr. HOBBS. Certainly.
>
> Mr. MARCANTONIO. That then could become an extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.
>
> Mr. HOBBS. I disagree with that and deny it in toto.[105]

Congressman Gwynne also indicated that the Act was not intended to cover "a clash between strikers and scabs during a strike."[106] Presumably, Congressman Hobbs also had this kind of picket line violence in mind. If so, the import of what Congressman Hobbs was saying becomes clear. Based on what he said elsewhere in the record,[107] it is inconceivable that he intended to exempt violence simply because it occurred in conjunction with an otherwise legal strike. Although some of the opponents of the bill felt that "minor altercations on the picket line"[108] should not be treated as felonies, there is no basis for assuming that Congressman Hobbs or any other supporter of the bill intended any distinction between "major" and "minor" acts of violence.[109] Rather, Congressman Hobbs's statement must be viewed in the context of the specific crimes the bill purported to prohibit—extortion and robbery. The purpose of most picket line violence is to prevent persons against whom it is directed from entering the employer's premises, not to obtain money from them. It is difficult to see how such violence could be conceptualized as either extortion or robbery. In short, Congressman Hobbs was simply recognizing that the Act did not reach *all* violence, but only that which would fit within the legal definition of extortion or robbery.

5. *The Intent Not to Discriminate For or Against Labor*

The fifth category of legislative remarks shedding light on the intended scope of the Hobbs Act are those which indicated that the Act should not discriminate on the basis of whether the violent actor was or was not associated with a labor union. Many congressmen objected to the *Local 807* case because it seemed to grant a special license to labor unions alone to use violence in the pursuit of their goals. For example, Congressman Hobbs said that the case "decided that no matter how much violence a *union* man might use *in seeking employment*, he could not be punished under the 1934 Anti-Racketeering Act."[110] He added,

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[105] 89 Cong. Rec. 3213 (1943).

[106] *Id.* at 3202 (remarks of Rep. Gwynne).

[107] *See* notes 89-90 & accompanying text *supra.*

[108] 91 Cong. Rec. 11901 (1945) (remarks of Rep. Celler).

[109] United States v. Enmons, 410 U.S. 396, 410 n.20 (1973).

> I am saying that is the effect of the construction put upon robbery committed while engaged in *otherwise lawful* conduct by the Supreme Court decision. No matter how much force is used, robbery is a perfectly innocent pastime, as Chief Justice Stone said, *if the perpetrator be a labor-union member seeking employment.*[111]

Similarly, it was also said that the *Local 807* case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence *in enforcing demands* so long as such force and violence are practiced by *members of labor organizations and unions*."[112] Such favored treatment was clearly not acceptable to Congress; it was the nature of the act and not the status of the actor that Congress thought was of controlling importance, and the Hobbs Act was designed to implement that policy. On this point, the following exchange is revealing:

> Mr. SUMNERS of Texas. There is nothing in this bill dealing with persons connected with organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.
>
> Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a *legitimate union activity*.[113]

In other words, "[a]ll are treated alike and no group is given special permission to violate the law."[114] Moreover, as these remarks demonstrate, the legitimacy of a group's goal or objective is irrelevant.

A fairly clear pattern emerges from this legislative history. Congress did not intend to interfere with otherwise peaceful strikes and picketing. Yet, Congress did intend to prohibit the use of force, violence, and threats as a means of obtaining wages or other things of value from an employer despite the fact that obtaining such benefits might be otherwise completely legitimate. In other words, as brokers of employee services, labor unions were to be limited in the use of force to the same extent as were other brokers or sellers of commodities; in either instance, the effectuation of the exchange through the use of force was to be prohibited as extortion.

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[110] 89 CONG. REC. 3195 (1943) (emphasis added).

[111] *Id.* (emphasis added).

[112] 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman) (emphasis added).

[113] 91 CONG. REC. 11843-44 (1945) (emphasis added).

[114] *Id.* at 11844 (remarks of Rep. Michener).

B. The Case Law

Although even a cursory review of the legislative history clearly indicates that Congress intended the Hobbs Act to prohibit labor from using force or violence as a means of obtaining concessions from employers, the initial judicial reaction was still somewhat hesitant. For example, in *United States v. Kemble*[115] the Third Circuit Court of Appeals was faced with facts not unlike those in *Local 807*. A union official had used actual and threatened violence to cause an employer to hire a union member to unload a truck whenever it made deliveries to an RCA plant. These services were not otherwise desired by this employer. The court had little difficulty in finding that, on these particular facts, a violation existed. The court, however, did hedge somewhat when it stated that:

> The conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. We say "in proper cases" advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, *that payment of money for imposed, unwanted and superfluous services* such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce *is within the language and intendment of the statute.*[116]

Although the majority decision was cautious in construing the scope of the new Act, it still went too far in the opinion of dissenting Judge McLaughlin. Notwithstanding the legislative history, he felt that the disagreement Congress had with the *Local 807* decision was a relatively narrow one. He maintained that the Supreme Court there had held that: (1) the use of force to become a genuine employee (one who actually works and is paid for it) was within the "wage" exception, and (2) the use of force to compel the payment of wages when the services of the would-be employee are refused was also within this exception. According to Judge McLaughlin, Congress' quarrel with the decision and its repudiation thereof pertained only to the second point, and that the defendant's conduct in this case fell within the still exempt first point. As such, it merely represented "a reputable union's genuine attempt to organize a trucking corporation,"[117] which was not the kind of conduct that the Hobbs Act was intended to prohibit. Generally, he felt that the use of violence by a labor union in pursuit of a legitimate goal, such as obtaining work for its members, is not a violation of the Hobbs Act; instead, it is a matter for state and local prohibition.

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[115] 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).

[116] 198 F.2d at 891-92 (emphasis added).

[117] *Id.* at 895 (McLaughlin, J., dissenting).

Judge McLaughlin's theory was rejected not only by the Third Circuit in *Kemble* but also, later, by the Supreme Court;[118] but not without first picking up some support elsewhere. In *United States v. Green*,[119] Federal District Judge Adair reversed a conviction on the grounds that the facts as alleged in the indictment did not state an offense under the Hobbs Act. The indictment, tracking fairly closely the language used in the *Kemble* case, charged that the defendant had used "actual and threatened force, violence and fear" to cause "wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers."[120] In concluding that this did not state an offense under the Act, Judge Adair relied on the proviso to the Hobbs Act which states that it was not designed to "repeal, modify or affect the provisions of . . . the Wagner Act."[121]

Given the legislative history of this section,[122] of which Judge Adair purported to have made "a personal investigation as to the intent of Congress,"[123] it is startling indeed to see how the section was used to support the result he reached. Noting that in several cases the Supreme Court had held that "a demand by a Union representative for 'feather-bedding' is not an unfair labor practice"[124] under the Wagner Act, Judge Adair stated, "[i]t seems incongruous that Congress intended that a lawful act"[125] under one statute would be punishable as a felony under another.

This reasoning is remarkable in two respects. First, it proceeds as if the Cellar version of the proviso had been adopted rather than the committee or Hobbs version. As previously discussed, Congressman Celler wanted the language to read, "no acts . . . which are lawful" under the labor statutes shall be considered unlawful under the Hobbs Act, with "lawful" apparently being equivalent to "not illegal."[126] Although Congress expressly rejected that approach, that is exactly the interpretation Judge Adair gave the statute.

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[118] *See* notes 130-38 & accompanying text *infra*.

[119] 135 F. Supp. 162 (S.D. Ill. 1955), *rev'd*, 350 U.S. 415 (1956).

[120] 135 F. Supp. at 162.

[121] 18 U.S.C. § 1951 (1976).

[122] *See* § III-A-3 of text *supra*.

[123] 135 F. Supp. at 162-63.

[124] *Id.* at 163. Judge Adair was undoubtedly correct in concluding that the union's objective in this case was "not illegitimate." This conclusion, as well as its significance insofar as the current law is concerned, will be discussed subsequently. *See* note 151 & accompanying text *infra*.

[125] 135 F. Supp. at 163.

[126] *See* note 84 & accompanying text *supra*.

In addition, Judge Adair simply ignored the warning of Congressman Hobbs that the "lawfulness" of the ultimate objective could not serve as a justification for the use of force to achieve it.[127] Congress, however, did apparently heed this admonition in that it rejected the Celler version which Hobbs said was susceptible to such a construction.

Nevertheless, Judge Adair concluded that—since obtaining wages, albeit for unwanted services, was within the defendant's "rights and responsibilities as a Union representative"[128]—no violation of the Hobbs Act existed even though violence was used to achieve that end. Instead, a violation is made out only when the end itself is "unlawful," as where the union representative is obtaining money for his own benefit.[129] Thus, on the question of the "legitimacy" of the end serving as an exoneration of violent means, Judge Adair was in line with the dissent in *Kemble*.

The Supreme Court, however, disagreed strongly. With respect to the notion that the Act applied *only* to a union official's attempt to obtain money for his own benefit, the Court simply noted that while the union officials in the *Local 807* case were not attempting to get the money for that purpose, the Congress clearly intended for the Hobbs Act to proscribe what they were doing.[130] Furthermore, the Court noted that "[t]he legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship"[131]—including, one would presume, the primary incidents of that relationship, namely the obtaining of work and the payment of otherwise legitimate wages.

With respect to Judge Adair's reliance on the proviso to the Hobbs Act which stated that it did not affect any of the several labor statutes the Court simply noted that: "There is nothing in any of those Acts, however, that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions."[132] The Court footnoted five cases that presumably illustrated labor conditions or objectives which the labor statutes did not affirmatively permit a union to seek through "threats of force of violence," and which, therefore, fell within the parameters of the Hobbs Act when those means are used. Significantly, in four of these cases, as in *Green* itself,[133] what the unions were trying to attain was not intrinsically "unlawful" or "illegitimate": In *United Construction Workers v. Laburnum Construction Co.*[134] the object was to get employees to join the union and to get the employer to recognize it as the employees' representative; *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*[135] involved employer accession to the union's contract demand and employee observance of the picket line; *NLRB v. Fansteel Metallurgical Corp.*[136] dealt with employer recognition of and negotiation with the union over wages, hours and working conditions; and in *Kemble*[137] the object was to get the employer to hire certain union helpers. Only *United States v. Ryan*[138] involved an objective that was itself illegal—namely, the payment of money by an employer to the representative of his employees. Thus, it would seem that in *Green*, the Supreme Court was concerned with the use of force and violence to obtain payments, not with the "legitimacy" or "illegitimacy" of the payments themselves.

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[127] *See* notes 89-90 & accompanying text *supra*.

[128] 135 F. Supp. at 163.

[129] *Id.* Most of the cases under the Hobbs Act have involved attempts by labor union officials to extort money for their own personal use. *See, e.g.*, United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978); Anderson v. United States, 262 F.2d 764 (8th Cir. 1959); United States v. Varlack, 225 F.2d 665 (2d Cir. 1955); United States v. Compagna, 146 F.2d 524 (2d Cir. 1944), *cert. denied*, 324 U.S. 867 (1945). In some instances the money was not obtained through the threatened use of physical violence, but through the threatened use of "economic force," *i.e.*, otherwise nonactionable strikes, picketing, and the like. How these cases fit into the conceptual scheme will be discussed at § III-C of text *infra*.

[130] United States v. Green, 350 U.S. 415, 419-20 (1956).

[131] *Id.* at 419 (footnote omitted).

This, certainly, is how the lower courts viewed the matter on remand.[139] Following the Supreme Court decision, the defendants asked that the verdict be set aside on the grounds that it was not supported by sufficient evidence and that the trial judge erred in refusing to submit a particular instruction to the jury. The instruction in question would have been to the effect that if the jury finds that the defendant has a "labor dispute" of a jurisdictional nature with another union at the time of the alleged threats to compel the payment of wages to its members for unwanted services, the matter was beyond the scope of the Hobbs Act.[140]

The Court of Appeals for the Seventh Circuit rejected that argument, noting the Supreme Court's admonition that the four labor statutes referred to in the proviso (which do generally regulate "labor disputes") in no way sanction the use of force or violence. The court added:

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[132] *Id.* at 420 (footnote omitted).
[133] *See* note 124 & accompanying text *supra*.
[134] 347 U.S. 656 (1954).
[135] 315 U.S. 740 (1942).
[136] 306 U.S. 240 (1939).
[137] 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).
[138] 350 U.S. 299 (1956).
[139] *See* United States v. Green, 143 F. Supp. 442 (S.D. Ill. 1956), *aff'd*, 246 F.2d 155 (7th Cir.), *cert. denied*, 355 U.S. 871 (1957).
[140] 246 F.2d at 160.

> We agree with the decisions that this statute encompasses illegal conduct which may be an outgrowth of a labor dispute just as any other criminal conduct may result from activity originally lawful. The mere fact that conduct originates in exercise of a lawful function does not prevent the ramifications and extensions thereof from becoming unlawful.[141]

This *exactly* reflects the position that Congressman Hobbs took with respect to the Act. In sum, the *Green* decision on remand correctly stands for the proposition that the use of violence or threats of violence by labor union officials to enforce their demands, regardless of legitimacy, constitutes extortion under the Hobbs Act.

Despite the Supreme Court's willingness to construe the Hobbs Act broadly and as intended, judicial hostility to the Hobbs Act continued to surface. It was conceded that the express congressional reversal of the *Local 807* case necessarily meant that Congress intended to include a demand for wages for work not done within the prohibition of the Act. In addition, the *Green* case necessarily meant that, at the very least, a demand for wages for *unwanted* work was covered. As one court framed it, the final issue was whether the Act covered "violence to property as a part of a plan to extort a thing of value in the form of a collective bargaining agreement covering wages, hours and working conditions of *wanted* employees."[142] The issue was ultimately answered in the negative. But the path to that result was strewn with unfortunate distortions of the legislative history and embarrassing contortions of ordinary logic and semantics.

The first major case to reach the result was *United States v. Caldes*.[143] Since the United States Supreme Court was to later speak approvingly of this decision,[144] a detailed analysis is in order. First, the court took a narrow view of the disagreement between Congress and the Supreme Court's result in the *Local 807* case. It said that Congress thought *Local 807* was wrong in recognizing the union member's willingness to work as an excuse for violence, since this could be construed as also permitting the use of force to "bring about the hiring of unwanted, unneeded employees."[145] This particular result was predicated solely on the Supreme Court's interpretation of section 2(a) (the "wage exception"), and the fact that "[t]he legislative history of the Hobbs Act shows that the deliberate purpose of Congress was to eliminate Section 2(a)."[146] Thus, the court in *Calders* reasoned that the purpose of the Hobbs Act was *merely* to compel a contrary result in cases like *Local 807*, where the work is either unperformed or unwanted. The court concluded that:

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[141] *Id.*

[142] United States v. Caldes, 457 F.2d 74, 75 (9th Cir. 1972).

[143] 457 F.2d 74 (9th Cir. 1972). *See generally* Willis, *Labor Violence—The Judiciary's Refusal to Apply the Hobbs Act*, 28 S.C. L. Rev. 143 (1976).

[144] *See* United States v. Enmons, 410 U.S. 396, 409 (1973).

[145] 457 F.2d at 77.

> By eliminating Section 2(a) however, Congress did not intend to eliminate traditional labor or union activity, albeit militant, which has as its object legitimate ends. The exclusion was not meant to provide impunity to the terroristic and extortionate activities of union members, but to protect union activity directed toward legitimate labor goals even when militantly pursued.[147]

The court then noted that the *Green* case fell within this pattern, since the purpose of violence there was to obtain wages for "imposed, unwanted and superflous or fictitious services."[148] The court also distinguished other lower court cases which had found that "extortion occurred when a union member tried to *foist* himself or another union member on an employer by threats of force and violence."[149]

What the court seemed to ignore was that Congress did not merely repeal the "wage exception" which was the technical basis of the *Local 807* case. Instead, Congress, entirely rewrote the Act for the express purpose of precluding decisions *like* that in *Local 807*.[150] This suggests a broad rather than a narrow congressional overruling of the decision. Given the repeated emphasis in the debates on the element of violence, it is more likely that it was this aspect of the *Local 807* facts that Congress found offensive—not just the objective to which the violence was directed.

Moreover, euphemisms and pejoratives are no excuse for sound analysis. Pouring paint on the employer's trucks and the clean laundry he was delivering, as in *Caldes*, is no more acceptable when it is called "militant," (in the court's language) than it is when it is called "the use of violence against property." At a more substantive level, the fact that something can be disapprovingly called "foisting" one's "unwanted and superfluous or fictitious services" on an employer does not necessarily preclude that conduct from also being called a "legitimate labor goal." Thus, the distinction articulated by the court is totally without substance.

A classic example of this is the *Green* case. The union there simply wanted the employer to hire union members to scout ahead of bulldozers and warn the drivers of approaching pitfalls; the employer felt that this was an unnecessary precaution. But whatever the dis-economies of the situation, this kind of job acquisition and work sharing among union members is a traditional, legitimate, and otherwise entirely legal objective and purpose of American labor unions.[151] Stated differently, it was as legitimate for the union in *Green* to want to induce the employer to hire an additional man to walk in front of the bulldozer as it was for the union in *Caldes* to want to induce the employer to enter into a collective bargaining agreement. In short, the court really did not succeed in distinguishing the violence in the case before it from the violence in *Green*—not, at least, by reference to the alleged "legitimacy" of the goal.

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[146] *Id.* at 76.

[147] *Id.*

[148] *Id.* at 77.

[149] *Id.* (emphasis added).

[150] *See* notes 69-71 & accompanying text *supra*.

The court, however, attempted to justify its distinction on another basis. It noted that the language of the Hobbs Act was derived from the New York extortion statute, and under that statute strikes and picketing had been found not to constitute "extortion" *if* the purpose was to accomplish some legitimate labor objective, such as organization; but such conduct was actionable when merely "used as a pressure device to exact the payment of money as a condition of its cessation."[152] The Hobbs Act had been similarly construed, the court noted, in a case where a labor leader had threatened to call a strike unless the employer paid him some "under the table" money.[153] From this the court apparently concluded that the illegitimacy of the objective is *always* a necessary element in a Hobbs Act violation. This reasoning, however, is fallacious.

The distinction adopted by the New York cases with respect to strikes can be understood only in a historical perspective.[154] At one time in the history of American labor law, under the so-called

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[151] Although the Labor Management Relations Act § 8(b)(6), 29 U.S.C. § 158(b)(6) (1976) contains a so-called "anti-featherbedding" provision, it would not prohibit the kind of conduct that was involved in *Green*. In American Newspaper Publishers Assoc. v. NLRB, 345 U.S. 100 (1953), the Court noted that the LMRA "limits its condemnation to instances where a labor organization or its agents exact pay from an employer in return for services not performed or not to be performed." *Id.* at 110. This conclusion is bolstered by Senator Taft's observation that although the Senate did not approve of featherbedding in the broader sense, it "felt that it was impractical to give a board or a court the power to say that so many men are all right, and so many men are too many." 93 CONG. REC. 6441 (1947). Moreover, a demand for the kind of work that was involved in *Green* would not only be a legitimate subject of bargaining, but also a mandatory one. As the Court in *American Newspaper Publishers* put it, the Act "leaves to collective bargaining the determination of what, if any, work, including bona fide 'made work,' shall be included as compensable services." 345 U.S. at 111.

[152] 457 F.2d at 78.

[153] United States v. Kramer, 355 F.2d 891 (7th Cir. 1966).

[154] *See generally* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 11-24 (1977), which contains, from a slightly different perspective, a

"conspiracy doctrine," strikes and picketing were sometimes said to be inherently coercive, because of the economic injury-in-fact that they caused the person to whom they were directed. However, even before the matter was almost totally preempted by federal statutory law, some of the common law courts had moved considerably away from that position and had adopted a "means/ends" approach. This approach declared the concerted activities of labor to be actionable or coercive only if they involved either "unlawful means"—conduct which was itself criminal, tortious, or perhaps even in breach of contract—*or* "unlawful ends"—a term capable of being construed as including almost anything a judge might find to be offensive.

Although this approach is certainly no longer the primary device for measuring the legality of strikes (that function having been assumed by the various federal labor statutes), ghosts of the theory do sometimes emerge in analgous contexts where the issue is whether an *otherwise peaceful* strike or picketing falls within the purview of some general statute prohibiting "acts of force" or "coercion." In such a case, if a violation exists at all it must necessarily be because the objective itself is unlawful or illegitimate.

The New York case, relied on by the *Caldes* court,[155] held that the otherwise peaceful picketing (the "means") became a coercive exercise of force only when the objective shifted from attempting to organize the employer (a legitimate "ends") to obtaining money from him as a condition of stopping the strike (an illegitimate "ends"). However, if this holding was merely a reflection of the historically pervasive "means/ends" theory of coercion, it becomes readily apparent that one cannot deduce from it what the *Caldes* court deduced—namely, that *no* strike can be considered coercive unless the ends are illegitimate. To the contrary, under the "means/ends" approach a *violent* strike is coercive regardless of its objective; and there is nothing in the New York case to suggest otherwise. Thus, the *Caldes* court's reliance on that authority was misplaced.

Finally, at the policy level, the *Caldes* court simply noted that labor unions should be allowed great latitude in pursuing the interests of their members and that "[t]he expansive interpretation of 'extortion' used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations."[156] The court contended, for example, that a strike in violation of a contractual no-strike clause would be a " 'wrongful' use

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comprehensive overview of the evolution of the "criminal conspiracy" doctrine.

[155] People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

[156] 457 F.2d at 78.

of force"[157] and thus, constitute criminal conduct under the Government's view. This is a somewhat puzzling assertion, since it would seem that a strike in violation of a "no-strike" clause would also be a violation under the court's approach. The objective of such conduct certainly could not be denominated a "legitimate labor goal"; thus, by analogy to the New York cases, a strike to obtain that objective could be considered "coercive" and, therefore, a violation of the Hobbs Act.

As a second example of the possible overbreadth of the Government's approach, the court noted that "[s]pontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if [the Government's] view was allowed to prevail."[158] The court then indicated that in the year following passage of the Hobbs Act Congress passed the Taft-Hartley Act, containing "specific provisions which condemned this action as unfair labor practices."[159] Furthermore, the court noted that during the debates on the Taft-Hartley Act, "no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress."[160]

The court's reasoning here is both obscure and factually incorrect. In the first place, the section of the Taft-Hartley Act to which the court specifically referred primarily prohibits secondary boycotts or union attempts to require a neutral employer to stop doing business with the employer with whom the union has a dispute.[161] Although violence can occur in connection with such boycotts, it is certainly not a necessary element of the offense. Moreover, even if violence did occur in a specific situation, the objective of a secondary boycott is to force the victim to stop doing business with someone else, not to force him to pay the union money or anything else of value, *as is required in order for the crime of extortion to exist*. In short, what the Taft-Hartley Act prohibited and what the Government in the *Caldes* case claimed that the Hobbs Act prohibited were two entirely different things. Thus, even if there had been no mention of the Hobbs Act during the Taft-Hartley Act debates, this would have in no way shown that the Government's interpretation of the Hobbs Act was overly broad.

As a matter of fact, however, the court was simply wrong in suggesting that during the Taft-Hartley Act debates no one referred to the prohibitions of the Hobbs Act insofar as strike violence is concerned. In addition to making secondary boycotts, organizational picketing, and jurisdictional disputes unfair labor practices, the Taft-Hartley Act gave federal courts jurisdiction over private damage suits brought by a person injured as a result of such conduct. Senator Aiken, however, wanted to add an amendment which would also allow for injunctive relief in certain situations. He was specifically concerned with the small farmer who could not deliver his produce because of a labor dispute at the market, and for whom a damage action would be impractical. Senator Pepper, in discussing the proposed amendment said: "I do not recall exactly the terms of it, but last year we passed the Hobbs bill, the so-called antiracketeering bill, which gave jurisdiction to the federal court to act with respect to interruptions of and interference with people delivering their goods, in the way I think the Senator from Vermont has in mind."[162] Senator Aiken, however, responded:

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[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *See* Labor Management Relations Act § 8(b)(4)(A), 29 U.S.C. § 158(b)(4)(A) (1976).

> It has developed that the Hobbs bill was not worth the paper upon which it was written, so far as affording any protection to the farmer was concerned, because the farmer is not *molested* in taking his crop to the market, but when he arrives there may find that the commission man has an agreement for a closed shop, and the farmer cannot unload his produce, and therefore is turned back.[163]

Discounting the hyperbole, Senator Aiken was saying that the Hobbs Act is inadequate to solve the problem totally because it only applies to situations where the farmer has been "molested." The restraints upon delivery that are caused by certain kinds of agreements, secondary boycotts or jurisdictional strikes cause just as real an injury to the farmer, but are not covered by the Hobbs Act. However, the correlative of his statement is that the Hobbs Act does, in fact, cover acts of "molestation," including those that occur in connection with union activities that were, at the time he made this statement, not otherwise illegal under the existing labor statutes. In short, it would seem that the 1947 Congress *was* aware that the Hobbs Act applied to acts of violence aimed at achieving ends which were not otherwise illegal. This would tend to support the Government's position in the *Caldes* case rather than refute it.

In summarizing its overbreadth argument, the court noted that "it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended . . . to elevate this type of conduct to the level of the federal court."[164] The opponents of the Hobbs Act, of course, made exactly the same kind of assertion.[165] However, it was of no moment to the *Caldes* court that the majority of Congress apparently felt otherwise.

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[162] 93 Cong. Rec. 4860 (1947).

[163] *Id.* (emphasis added).

[164] 457 F.2d at 79.

[165] *See, e.g.*, 89 Cong. Rec. 3201, 3225 (1943); 91 Cong. Rec. 11901 (1945).

As specious as the reasoning in the *Caldes* case was, the same result was eventually reached by the United States Supreme Court without any firmer basis insofar as legislative history or analysis is concerned. In *United States v. Enmons*,[166] the defendants were indicted for firing high-powered rifles at three utility company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company—all done for the purpose of obtaining higher wages and other employment benefits from the company for the striking employees. The indictment was, however, dismissed by the district court on the theory that the Hobbs Act did not prohibit the use of violence in obtaining "legitimate" union objectives.[167] On appeal, the Supreme Court affirmed, advancing four separate justifications for its conclusion.

First, the Court focused on the fact that the statute prohibited only the "wrongful" use of force to obtain property.[168] The Court noted that Congressman Hobbs intended the term "wrongful" to modify the entire section;[169] if it modified only the term "force" it would be redundant because any force to obtain property is wrongful. Therefore, the Court concluded that " 'wrongful' has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property."[170] The Court then added: "Construed in this fashion, the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs, and where unions used the proscribed means to exact 'wage' payments from employers in return for 'imposed, unwanted, superfluous and fictitious services' of workers."[171]

There are a number of things critically wrong with the Court's reasoning. First, the dilemma posed by the Court—"either construe the Act this way or make it redundant"—is essentially false since there are other possible interpretations. For example, one court of appeals previously suggested that "wrongful" referred to conduct constituting a breach of the peace in contrast to merely tortious conduct.[172] This interpretation gives the term "wrongful" a meaning as a modifier of the term "force" that is certainly as reasonable as the interpretation suggested by the Supreme Court.

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[166] 410 U.S. 396 (1973).

[167] United States v. Enmons, 335 F. Supp. 641 (E.D. La. 1971), *aff'd*, 410 U.S. 396 (1973).

[168] Specifically, the Act defines extortion as "the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence or fear . . . ." 18 U.S.C. § 1951(b)(2) (1976) (emphasis added).

[169] 410 U.S. at 399 n.2.

[170] *Id.* at 400.

[171] *Id.* (footnotes omitted).

A more compelling explanation of the intended meaning of the term "wrongful" can, however, be found through a thoughtful reading of the legislative history. As previously indicated, many of the opponents of the Hobbs Act were fearful that the Act would be construed to prohibit legitimate strikes and picketing.[173] Some of them even suggested that a strike is, by definition, the assertion of a form of force.[174] The Hobbs Act proponents answered, of course, that the right to strike was protected by various federal labor statutes; that the rights affirmatively guaranteed by those statutes were not taken away by the Hobbs Act; but that there was nothing in those statutes which gave unions the right to use violence in the course of the exercise of the right to strike.[175]

It is against this background that Congressman Hobbs assertion that the term "wrongful" "qualifies the entire section" must be viewed.[176] Congressman Voorhis, who was not an enthusiastic supporter of the bill, wanted to make sure that a simple threat to go on strike for higher wages would not be construed as extortion under the Act. He was advised that it would not. He then immediately asked the additional question, "Does the word 'wrongful' apply to entire section?"[177] Presumably he wanted to make doubly sure that a *peaceful* strike would also not be considered wrongful under the Hobbs Act. Congressman Hobbs, in response to the question, then said that term wrongful "qualifies the entire section."[178] Congressman Hobbs undoubtedly intended this statement to assuage Congressman Voorhis' fears that the Act, notwithstanding the proviso, might be so broadly construed as to prohibit even peaceful strikes. In other words, Congressman Hobbs was saying that even if strikes are considered a form of coercion or force, they are not "*wrongful* force" unless accompanied by violence. This interpretation easily removes the redundancy which so concerned the Court.

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[172] Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).

[173] *See, e.g.*, 89 CONG. REC. 3194, 3218 (1943); 91 CONG. REC. 11901 (1945).

[174] Congressman LaFollette, for example, said that "[o]f course, there is an element of coercion in strikes. It is the only right labor has." 91 CONG. REC. 11920 (1945).

[175] *See* 89 CONG. REC. 3193, 3202 (1943); 91 CONG. REC. 11904-05 (1945).

[176] This assertion, and other matters summarized in the text, occured in the course of remarks among Congressmen Voorhis, Sumners, and Hobbs, recorded at 91 CONG. REC. 11908 (1945).

[177] *Id.*

[178] *Id.*

Even if the Court correctly concluded that the operative effect of the term "wrongful" in the statute is to identify the objective toward which the force must be directed in order for it to constitute extortion, the Court's reasoning on this point is still subject to question. It is based on the strange assumption that a person has no "lawful claim" to wages which are paid for unwanted services, as in the *Green* case, but that he does have such a claim to wages higher than those the employer would voluntarily pay in the absence of force "in return for genuine services which the employer seeks,"[179] as in the *Enmons* case. However, the distinction is analytically vacuous. A person has a no more "lawful claim" to work at $5.00 an hour for an employor who wants to pay only $4.75 than does another person who wants to work for an employer who does not want this person's services at all. In either case, the would-be employee's "lawful claim" to wages is dependent upon the employer's voluntary or noncoerced agreement to pay such wages. Nevertheless, on the basis on a non-existent distinction, the Court would apply the statute in one case but not the other.

The Court's second justification is somewhat related to this latter point; the Court simply claimed that "[t]he legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve *legitimate* labor ends."[180] To support this extraordinary proposition, the Court first relied on the fact that Congress undoubtedly wanted to overrule the *Local 807* case which had permitted union members to "use their protected status to exact payments from employers for imposed, unwanted, and superfluous services"[181]—presumably *not* a "legitimate" labor objective, although the Court does not explain why. Assuming that overruling that aspect of the *Local 807* case was the limited intent of Congress, the Court then inferred an intent *not* to prohibit violence in the pursuit of "legitimate" objectives. In support of this conclusion, the Court referred to several assertions made during the debates to the effect that the bill was not intended to interfere "with any legitimate activity on the part of labor people or labor unions."[182]

This chain of reasoning is weak at almost every link. For example, the Court did not provide an *objective* basis for distinguishing "legitimate" labor goals from "illegitimate" ones—a basis which could be used to differentiate the objectives being pursued by the union in *Green* from those being pursued by the labor union in

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[179] 410 U.S. at 400.

[180] *Id.* at 401 (emphasis added).

[181] *Id.* at 403.

[182] *Id.* at 404 (quoting 91 CONG. REC. 11908 (1945) (remarks of Rep. Sumners)).

Enmons.[183] In neither case were the objectives independently illegal, that is, illegal regardless of the means used to achieve them. Also, while it is undoubtedly true that Congress intended to reverse the *Local 807* case, an impartial reading of the legislative history suggests that Congress was *at least* as concerned with the means that were being used in that case as it was with the ultimate objective being pursued. Finally, the statements relied upon by the Court to the effect that the Act would not affect "legitimate" labor activity must be construed in *pari materia* with the more specific assurances that this result would be accomplished by the proviso guaranteeing that the existing labor statutes would not be modified or repealed. This guarantee was, however, tempered by the repeated reminder that these statutes in no way gave labor unions the right to use force or violence.[184]

In short, from conclusion that the Act was not intended to prohibit "legitimate" labor activities, one simply cannot infer that the legitimacy of the objective justifies whatever means are used to achieve it.

The inference not only does not flow from the legislative history; indeed, it is affirmatively contradicted by it. Congressman Hobbs' *single* objection to Congressman Celler's amendment was that it would allow conduct which was aimed at "lawful" ends to escape the prohibitions of the Act even though the conduct itself was "unlawful."[185] By rejecting the Celler amendment, Congress necessarily also rejected the interpretation given to the Act by the Supreme Court in *Enmons*: that the legitimacy of the ends sought remove whatever means are used to achieve them from the prohibitions of the statute. Furthermore, while the Court was correct in saying that the Celler amendment was rejected because it "would have operated to continue the effect of the *Local 807* case,"[186] the Court was grossly incorrect in asserting that it was done "solely"[187] for that reason, and that "undoing the restrictive impact of that case"[188] *merely* means that violence directed at otherwise "illegitimate" ends is now illegal under federal law. To the contrary, it would appear that the legislative overruling of *Local 807* had a much broader purpose.

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[183] In *Enmons*, the objective of the violence was simply to obtain a more favorable collective bargaining agreement, an obviously legitimate goal in itself, while in *Green* the objective was to obtain job opportunities for union members, a similarly legitimate and entirely traditional goal of the labor movement. *Cf.* United States v. Green, 246 F.2d 155, 160 (7th Cir. 1957) ("There is no doubt that unions have the right to settle disputes [such as the one involved in that case] peacefully by means of negotiation . . . ."); *see also* note 151 *supra*.

[184] *See* notes 173-78 & accompanying text *supra*.

[185] *See* notes 89-90 & accompanying text *supra*.

[186] 410 U.S. at 408.

[187] *Id.*

[188] *Id.*

The *only* specific language in the legislative history from which the Court could derive support for its interpretation was a single, obscure dialogue between Congressman Marcantonio and Hobbs.[189] However, as was previously discussed,[190] that exchange cannot be construed as a condonation by Hobbs of violence directed toward achieving a "legitimate" end. The Court's reliance on this exchange in support of its interpretation of the statute is unwarranted if not totally misplaced.

The third justification advanced by the Court scarcely deserves mention. The Court simply noted that "[i]n the nearly three decades that have passed since the enactment of the Hobbs Act, no reported case has upheld the theory that the Act proscribes the use of force to achieve legitimate collective-bargaining demands."[191] The Court, without explanation, here cited *Green* and *Kemble* as cases allegedly involving "illegitimate" labor demands, and cited *Caldes* as a case involving "legitimate" labor demands where the indictment was properly dismissed. These cases, however, are either unpersuasive or simply not supportive of the Court's theory.

Nevertheless, from all this the Court concluded that Congress did not intend to legislate the manner in which labor enforced its various demands, since "[i]t is unlikely that if Congress had indeed wrought such a major expansion of federal criminal jurisdiction in enacting the Hobbs Act, its action would have so passed unobserved."[192] To say the least, this is a rather novel theory of statutory interpretation and one certainly not adhered to in other contexts.[193]

Finally, in justifying its narrow interpretation of the Hobbs Act, the Court trotted out its "parade of horribles." The Government's theory, the Court said:

> [W]ould cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.[194]

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[189] *See* text accompanying note 105 *supra*.

[190] *See* text accompanying notes 105-09 *supra*.

[191] 410 U.S. at 408.

[192] *Id.* at 410.

[193] For example, it apparently "passed unobserved" for roughly a hundred years that in the Civil Rights Act of 1866 Congress intended to prohibit purely private as well as public discrimination. However, this did not prevent the Court from so holding in the first case where the issue was squarely presented. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

[194] 410 U.S. at 410 (footnotes omitted).

In the first place, as has been suggested before, a reasonable interpretation of the Hobbs Act need *not* include within its ambit *all* violence connected with a strike; in many instances either the victim or the purpose is different than would be required in order to constitute "extortion."[195] Moreover, if it is unlikely that Congress intended to severely punish a person who slices tires in the course of a strike to obtain $.50 more per hour, it is certainly no more likely that Congress intended to impose such punishment when that particular conduct occurs in the course of a strike to obtain additional but unwanted work for union members; yet that result could be reached even under the Court's theory. There is, in short, simply no logical relationship between the Court's concern over excessive punishments and its theory that the Act should therefore be limited to conduct having an "illegitimate" objective.

In addition, the Court apparently lost sight of the fact that the Hobbs Act, like many other statutes, merely establishes the *maximum* possible punishments. While it is true that the opponents of the Hobbs Act thought these sanctions might be potentially excessive if applied to the so-called "milder" forms of labor violence,[196] the majority in Congress either felt otherwise or knew that judges would exercise the discretion inherent in their function and mold the punishment to fit the crime.[197] In any event, the Court's concern that an overzealous tire slasher might be fined to the point of impoverishment and incarcerated for the better part of his life is neither a necessary nor even a proper basis for construing the statute the way the Court did.

In sum, none of the reasons advanced by the Court for its reading of the statute can withstand hard analysis. The Court's distortion of the legislative history is particularly disturbing, and it was primarily this that led Mr. Justice Douglas, dissenting, to state:

> At times, the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words. But where, as here, the consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us . . . .[198]

The purpose, which Mr. Justice Douglas found evident from a careful review of the legislative history, was simply that "[t]he regime of violence, *whatever its precise objective*, is a common device of extortion and is condemned by the Act."[199] With respect to the majority's position, he bluntly but correctly observed that "[t]he Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do."[200]

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[195] *See* text following note 109 *supra*.

[196] *See, e.g.*, 89 CONG. REC. 3201 (1943), where Congressman Celler voiced the concern that the bill may permit simple assaults to be converted into felonies.

[197] *See* Livers v. United States, 185 F.2d 807, 809 (6th Cir. 1950) ("In the enactment of our national laws against crime, the Congress has vested United States District Judges with wide discretion in assessing punishment within the limits of the various federal statutes.").

[198] 410 U.S. at 418 (Douglas, J., dissenting) (footnotes omitted).

C. Current Ambiguities in the Law

Although the *Enmons* decision resolved the specific issue that was before the Court, the opinion at the same time created two glaring points of uncertainty. First, the Court's holding that the Act does not apply to the enforcement of "legitimate" union demands leaves open the question of what exactly an "illegitimate" union demand might be. At the very least, if the sought-after payment would itself be illegal, whether obtained through force or otherwise, a demand for such payment would potentially be within the purview of the Hobbs Act even under the *Enmons* decision. This would appear to cover certain proscribed payments by an employer to any representative of his employees,[201] as well as employer payments into pension funds, check-off payments, and other such payments when not done according to the strict mandates of the law.[202] Arguably, the payment of wages in excess of either mandatory wage guidelines or the terms of a collective bargaining agreement containing a no-strike clause could be included as well. True "featherbedding" would almost certainly be considered a proscribed objective.[203] An employer's requirement that his employees pay union dues in the absence of a valid union security agreement or each individual's voluntary agreement to pay would also seem to qualify,[204] as would the illegal recognition of a union.[205]

More troublesome, however, are those objectives which are not intrinsically "unlawful" but which are, nevertheless, susceptible to being called "illegitimate." The existance of this category is a necessary, though perhaps unintended,[206] corollary of the fact that the Court in *Enmons* clearly reaffirmed the *Green* decision. In point of fact, the objective of the union in *Green* was not independently unlawful. Although the union may have been seeking wages for services which the employer felt he did not need, the union members were apparently willing to actually do the work, and thus *Green* was not a true case of "featherbedding" in the statutory sense.[207] What other kinds of "illegitimate" but not unlawful objectives the Court might have in mind is subject only to speculation.[208]

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[199] *Id.* (emphasis added).

[200] *Id.* at 413.

[201] *See* United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976). Under the circumstances of that case, the payment of the money was itself thought by the court to be an independent violation of the Taft-Hartley Act, 29 U.S.C. § 186(a) (1976), which generally prohibits payments by an employer to the representative of his employees, thus making it an "illegitimate" objective under the *Enmons* approach.

[202] *See, e.g.*, 29 U.S.C. § 186(c)(4) & (5) (1976) (pertaining to payments made under check-off authorizations and employer contribution into pension funds).

[203] *See* 29 U.S.C. § 158(b)(6) (1976); United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Callahan, 551 F.2d 733 (6th Cir. 1977).

[204] *See* 29 U.S.C. § 158(a)(3) (1976).

[205] *See* United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

As has been shown, one source of ambiguity stems from the Court's conclusion in *Enmons* that "illegitimacy" of the objective is a necessary element of a Hobbs Act offense. Another ambiguity which the decision creates is whether physical force or violence is also a necessary element. Under prior case law it clearly was not. One of the recurring issues in the cases involving demands for personal payoffs to union officials was whether such demands, when backed *merely* by threats of strikes, picketing, or other presumably peaceful "labor difficulties," could constitute extortion under the Hobbs Act, or whether either actual force or threatened force was required. The courts had consistently held that "[r]easonable fear of economic loss was enough to come within the statute."[209] The court in *United States v. Varlack*[210] explained:

> [I]t is . . . clear that it was not the intention of the Congress to interfere with the exertion of peaceful economic pressures by a union through the medium of strikes to achieve *legitimate* labor objectives. But it does not follow . . . that only violence or threats of violence are covered by the Act and that the Act is not violated when union leaders or representatives obtain . . . personal enrichment by using their . . . influence to instill in the minds of the employers with whom they deal a fear of work stoppages or the prolongation of strikes.[211]

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[206] The Court may have simply misread the *Green* decision, for there is some suggestion in the opinion that the Court viewed the facts in *Green* as substantially similar to those in the *Local 807* case. *See* 410 U.S. at 406. This, however, is not accurate in that, in at least some instances, the union members in *Local 807* did not even offer to do any work, thus making it a case of true "featherbedding," and, under *current* law at least, an illegitimate union objective. *See* note 151 *supra*. There was no suggestion of that in *Green*.

[207] *See* note 151 *supra*; *see also*, United States v. McCullough, 427 F. Supp. 246 (E.D. Pa. 1977).

[208] In United States v. Warledo, 557 F.2d 721 (10th Cir. 1977), a non-labor case, members of a certain Indian tribe were indicted for attempting to obtain money from a railroad to redress past wrongs against the tribe. Payment by the railroad would not, of course, have been illegal, and they alleged that their belief in the validity of their claim was sufficient to bring them within the *Enmons* exception. The Court of Appeals disagreed. "To say that the pursuit of a payment from the railroad for *alleged* past wrongs is not wrongful taxes the statutory language to a highly unreasonable degree." *Id.* at 730.

[209] United States v. Stirone, 262 F.2d 571, 575-76 (3d Cir. 1958).

[210] 225 F.2d 665 (2d Cir. 1955).

[211] *Id.* at 669.

Thus, the case law seemed to stand for the symmetrical proposition that it was extortion if *either* the ends *or* the means were independently illegal.[212] By requiring an "illegitimate" objective in every case, *Enmons* necessarily destroyed this formulation, but it is not clear what the decision provides by way of substitution. There are two alternatives: Actual legality of the means used is no longer a relevant factor at all, thus making the "illegitimacy" of the ends both a necessary and a sufficient condition of the violation; or *both* illegitimate ends *and* otherwise illegal means (violence or threats of violence) are now necessary for a violation of the Act.

The Court's statement in a footnote to its discussion of the term "wrongful," in *Enmons* is relevant to this issue:

> The Government suggests a convoluted construction of "wrongful." It concedes that when the means used are not "wrongful," such as where fear of economic loss from a strike is employed, then the objective must be illegal. If, on the other hand, "wrongful" force and violence are used, even for a legal objective, the Government contends that the statute is satisfied.[213]

The Government's theory was, of course, consistent with the either/or proposition suggested above. In this footnote the Court was clearly rejecting the proposition that the means alone can render a demand illegal. Whether they were also rejecting the proposition that the ends alone can render a demand illegal, is only problematical. That such was *not* the Court's intent can perhaps be deduced from the fact that the Court also said that "the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs . . . ."[214] The Court here cited three lower court cases which stand unequivocally for the proposition that fear of economic loss, brought about by otherwise peaceful and not illegal strikes or picketing, can rise to the level of extortion under the Hobbs Act, provided the end being sought is itself an illegitimate one.[215] Presumably, the Supreme Court was of the same view.

On the other hand, there *is* specific language in the legislative history to suggest that the typical "shake down," where a union official uses his power to call or prolong strikes as a form of threat to induce an employer to make personal payoffs, is not extortion in the statutory sense. Presumably, Congress intended to not involve itself through the Hobbs Act in otherwise peaceful strikes and picketing. In dialogue supporting this proposition, Congressman Sumner stated: "There have been complaints that in the case of strikes an attorney has gone in and asked an operator something like $15,000 or $20,000 as a shakedown to stop a strike. Is there anything in this bill about that?"[216] Congressman Jennings responded: "Not a thing. This does not have a thing in the world to do with strikes."[217]

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[212] Comment, *Featherbedding and the Federal AntiRacketeering Act*, 26 U. Chi. L. Rev. 150, 159 (1958).

[213] 410 U.S. at 400 n.3.

[214] *Id.* at 400 (footnote omitted).

[215] United States v. Iozzi, 420 F.2d 512 (4th Cir. 1970); United States v. Kramer, 355 F.2d 891 (7th Cir.), *cert. granted and case remanded for resentencing*, 384 U.S. 100 (1966); Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).

Since *Enmons*, there have been a number of cases where the courts have indicated that union officials can be convicted for extorting money or other benefits through threats of "economic harm" to an employer.[218] Apparently, the implications of *Enmons* on this issue and the significance of that bit of legislative history have not been discussed. This, however, is a matter of some concern. Where the end is affirmatively illegal, as in the personal payoff situations, perhaps the threatened use of economic force can be called "extortion" without doing undue violence to the term. However, where the "illegality" flows from the fact that the objective is inconsistent with a previously agreed to contract term, one begins to get a little uneasy. Is it proper to make it a "crime" to strike to achieve such an objective? Regardless of one's judgment on this question, it is quite another matter to label as "extortion" the threatened use of *otherwise* peaceful and legal economic force for the purpose of achieving an end which is itself *merely* "illegitimate," as in the *Green* case. Although it seems unlikely that anyone would ever be convicted of extortion for striking in order to require a railroad to hire a "fireman" for a diesel locomotive, such a result flows logically from the *Enmons* decision. This is because the Court in *Enmons* characterized the objective of the union in *Green* as being "illegitimate" even though it was not in fact affirmatively illegal, and suggested that the use of economic force with respect to such ends can be considered extortionate. On the other hand, if the Court did not intend that result, one is necessarily left with the conclusion that the theoretical underpinnings of *Enmons* are hopelessly ambiguous. In either event, some clarification by the Court is certainly in order.

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[216] 91 CONG. REC. 11912 (1945).

[217] *Id.*

[218] *See, e.g.*, United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Nell, 570 F.2d 1251 (5th Cir. 1978); United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978).

IV. PENDING LEGISLATION

At the time of the *Enmons* decisions, revisions to the Hobbs Act were already in the process of formulation. In 1966, Congress created the National Commission on Reform of Federal Criminal Laws,[219] commonly called the "Brown Commission" after its chairman, Edmund G. Brown, former Governor of California. The mandate of this Commission was to study the existing body of federal criminal laws, including the Hobbs Act, and to make recommendations to Congress for revision and recodification. In 1971 the Commission submitted its final report, consisting primarily of a proposed draft of a federal criminal code with brief comments for each section.[220] Under this code, extortion, a separate offense under the Hobbs Act, was simply treated as a form of theft. Section 1732 provided that: "A person is guilty of theft if he: . . . (b) knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat . . . ."[221] Section 1741 further provided that

> 'threat' means an expressed purpose, however communicated, to (i) cause bodily injury in the future to the person threatened or to any other person; or (ii) cause damage to property; or (iii) subject the person threatened or to any other person to physical confinement or restraint . . . or (x) bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or (xi) cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes . . . .[222]

Part (x) of the definition stated that a strike or boycott which is not for the purpose of obtaining benefits for the whole group, as in the typical "payoff" or "shakedown" situation, is to be considered illegal. Presumably this is true even though the strike or boycott is an otherwise peaceful one. It also seems clear from the structure of the definition that violence intended to coerce the settlement of a strike (*i.e.*, causing bodily injury, property damage, or physical restraint to obtain an otherwise legitimate group benefit) is also illegal. Finally, as the comments to this section of the draft make clear, part (xi) was clearly designed to exclude from the coverage of the section any threatened or actual enforcement of a union security agreement as long as the dues received under threat of discharge were used for lawful union purposes.[223] Thus, the Brown Commission draft would not have accomplished any major changes in the Hobbs Act as it had been construed before *Enmons*.

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[219] Act of Nov. 8, 1966, Pub. L. No. 89-801, 80 Stat. 1516, *as amended*, Act of July 8, 1969, Pub. L. No. 91-39, 83 Stat. 44.

[220] *Reform of the Federal Criminal Laws: Hearings Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part I*, 92d Cong., 1st Sess. 129 (1971) [hereinafter cited as *Hearings, Part I*].

[221] *Id.* at 359.

[222] *Id.* at 373-74.

The Brown Committee report was submitted to Congress, where it was referred to the Senate and House Committees on the Judiciary and to the President, who created a Criminal Code Revision Unit within the Department of Justice for further study and revision. The Senate Committee's end product, after two years of hearings, was bill S. 1,[224] introduced by Senators McClellan, Hruska and Ervin on January 4, 1973.[225] Although it was derived from the Brown Committee draft, S. 1 differed from that draft in many ways. With respect to the extortion provisions, S. 1 opted in favor of a return to the carefully hammered out language of the existing Hobbs Act. Section 2-9C3 provided that: "A person is guilty of extortion if he intentionally obtains services or property of another from another person, with the consent of the other person, where such consent is induced by wrongful use of actual or threatened force, violence or fear, or under color of official right."[226]

The section-by-section explanation of S. 1 simply stated that "[t]he language is taken from [section] 1951 to carry forward its judicial construction,"[227] presumably including, insofar as Supreme Court cases are concerned, the *Green* decision. It is significant to note that the *Enmons* decision, appearing on February 22, 1973, had not been handed down at the time this explanation was written.

In the meantime, the Criminal Code Revision Unit of the Justice Department had also been working on a draft criminal code. S. 1400[228] was introduced by Senators Hruska and McClellan on March 27, 1973[229] after *Enmons* had been rendered, and was clearly drafted with the intent of repudiating the decision. Section 1722(a) provided that: "A person is guilty of an offense if he knowingly obtains property of another by force, or by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged."[230] The explanation to this section of the bill said that it was "worded to overcome the adverse effects of a recent Supreme Court opinion construing the legislative intent as to one aspect of the existing statute in an unusually restrictive manner."[231] Presumably, the authors of S. 1400 believed that they accomplished this by the omission of the word "wrongful" in the definition of the crime, since the rationale of the *Enmons* decision hangs fairly heavily on the presence of that word in the Hobbs Act.

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[223] *Id.* at 374.

[224] S. 1, 93d Cong., 1st Sess. (1973); *Reform of the Federal Criminal Laws: Hearings on S. 1, S. 716, S. 1400, S. 1401 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part V*, 93d Cong., 1st Sess. 4211-748 (1973) [hereinafter cited as *Hearings, Part V*].

[225] 119 Cong. Rec. 92 (1973).

[226] *Hearings, Part V, supra* note 224, at 4346.

[227] *Id.* at 4786.

[228] S. 1400, 93d Cong., 1st Sess. (1973), *Hearings, Part V, supra* note 224, at 4862-5197.

[229] 119 Cong. Rec. 9634 (1973).

Hearings were subsequently held on all three versions of a proposed federal criminal code—the Brown Commission draft, S. 1, and S. 1400. On January 15, 1975, Senator McClellan, for himself and several other Senators, introduced a new S. 1[232] which incorporated elements of all three of the proposals. Significantly, this S. 1 adopted the language of S. 1400 insofar as extortion was concerned, and the draft report clearly indicated that the Subcommittee intended to overrule the *Enmons* decision.[233] Some doubt was expressed, however, as to whether the language used was capable of having that effect. A statement by the Associated Builders and Contractors suggested that in order to make the matter clear the following be added after the final word "damaged" in section 1722(a): "Notwithstanding that the same acts or conduct may also be a violation of state or local law, and notwithstanding that such acts or conduct were used in the course of a legitimate labor dispute or in the pursuit of legitimate union or labor ends or objectives."[234] The second S. 1, with some amendments, was reported by the Subcommittee on Criminal Laws and Procedures to the full Committee on the Judiciary on October 21, 1975, where the bill was allowed to die.

The next step was taken on May 2, 1977, when Senators McClellan and Kennedy introduced S. 1437,[235] the Criminal Code Reform Act of 1977.[236] This bill allegedly represented a compromise on several controversial and important points, the lack of agreement on which had kept prior bills from moving through the legislative process. The extortion offense, however, was again simply defined, as obtaining property of another "(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or (2) under color of official right."[237]

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[230] *Hearings, Part V, supra* note 224, at 5966.

[231] *Id.* at 4847.

[232] S. 1, 94th Cong., 1st Sess. (1975).

[233] SENATE COMMITTEE ON THE JUDICIARY, 94TH CONG., 2D SESS., DRAFT REPORT TO ACCOMPANY S. 1 644-59 (Comm. Print 1975).

[234] *Reform of the Federal Criminal Laws: Hearings on S. 1 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XII*, 94th Cong., 1st Sess. 215 (1975).

[235] 123 CONG. REC. S6831 (daily ed. May 2, 1977).

[236] S. 1437, 95th Cong., 1st Sess. (1977), *Reform of the Federal Criminal Laws: Hearings on S. 1437 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XIII*, 95th Cong., 1st Sess. 9485-792 (1977) [hereinafter cited as *Hearings, Part XIII*].

The Committee Report on S. 1437[238] contains an excellent summary of the then existing law with respect to extortion under the Hobbs Act and indicates approval of the judicial decisions holding that "fear" under the statute applies not only to fear of physical violence but also fear of economic harm to the victim's property or business. Moreover, the report is unequivocal in its repudiation of the *Enmons* "legitimate objectives" rationale. Noting that such an exception had not been recognized with respect to extortion by other persons, the Committee felt that labor union officials were not entitled to such a privileged treatment.

> The thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought, and this principle should apply in the collective bargaining context as well as elsewhere. Thus, an employer who blows up a union office or causes a union official to be assaulted in order to instill fear and thereby obtain property of the union ought to be guilty under the Act irrespective of whether the property could have been obtained lawfully through collective bargaining. And the same should be true in the reverse situation. Accordingly, the Committee has proposed in effect to overturn the *Enmons* result by treating the parties engaged in a labor dispute no differently from other persons in terms of the applicable prohibitions under this section, which is limited to extortionate means involving actual or threatened violence.[239]

The Committee Report, however, also responded to the concern expressed by the *Enmons* Court that minor acts of picket line violence might, but for a narrow reading of the statute, be elevated into a federal felony. The report noted that

> in the Committee's view such acts do not fall within the purview of the Hobbs Act (nor should they be Federally punishable) since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property; in short, such isolated acts of violence do not partake of the nature of extortion.[240]

To insure that the Act would be construed in that fashion, the proposed extortion provision contained an additional section specifically recognizing that "[i]t is an affirmative defense to a prosecution under subsection (a)(1) that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the course of a bona fide labor dispute."[241] Senator Kennedy, who introduced S. 1437 in the Senate, explained that "a defense is added to the extortion provision to make it clear that minor incidents occuring in the course of legitimate labor picketing are not punishable under the extortion statute."[242]

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[237] *Id.* at 9602.

[238] S. Rep. No. 605, 95th Cong., 1st Sess. (1977).

[239] *Id.* at 624-25.

[240] *Id.* at 624.

Immediately thereafter, however, Senator Kennedy introduced an amendment to the extortion provision which deleted the "affirmative defense" section altogether and substituted the following:

> (b) PROOF.—In a prosecution under subsection (a)(1) in which the threat or fear is based upon conduct by an agent or member of a labor organization consisting of an act of bodily injury to a person or damage to property, the pendency at the time of such conduct, of a labor dispute, as defined in 29 U.S.C. 152(9), the outcome of which could result in the obtaining of employment benefits by the actor, does not constitute prima facie evidence that property was obtained 'by' such conduct.[243]

In Senator Kennedy's view, the amendment simply clarified existing law, which, as he understood it, required proof not only of acts of violence but also of the fact that the violence was done with the intent of extorting. Beyond saying that and restating what the amendment itself said directly,[244] he offered no explanation.

Senator Thurmond's remarks, on the other hand, were considerably more enlightening. In explaining his lack of objection to the amendment, he noted that:

> This amendment would add a "proof" subsection designed to prevent a trial judge from holding that, in a case described in the new subsection, mere proof that personal injury or property damage occurred during a labor dispute constitutes a sufficient showing of the causal relationship between the obtaining of property and the threat of fear based on that injury or damage to justify submission of that issue to the jury. It prevents such a holding directly, by providing that proof of the coincidence of the labor dispute and the injury or damage in such a case is not "prima facie evidence" of the causal relationship. It is true, of course, that such a causal relationship sometimes does exist where injury or damage occurs during a labor dispute. This proposed subsection, however, is based on the belief that where there is a cause and effect relationship, or the intent to obtain property by means of a threat or fear resulting from injury or damage, it should be possible to prove, in addition to that coincidence, some other circumstances adding to the strength of the inference of causation.
>
> The proposed subsection does not address the question of which particular additional circumstance or circumstances, when proven along with that coincidence, will suffice to justify the submission of the issue to the jury. One which clearly would be sufficient in many cases to avoid a directed verdict is the circumstance that the defendant was, or conspired with, a person negotiating on behalf of the union involved in the labor dispute. The same result might obtain, where the repetitive or systematic

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[241] *Hearings, Part XIII, supra* note 236, at 9602-03.

[242] 124 CONG. REC. S12 (daily ed. Jan. 19, 1978).

[243] *Id.* at S17.

[244] *Id.* at S17-18.

> nature of property damage, or its exact timing, contributed to an inference, based also on the fact that a labor dispute was pending at the time the damage was done, that the damage was purposeful rather than mindlessly vindictive.[245]

The amendment was adopted[246] and S. 1437 passed the Senate on January 30, 1978;[247] however, the bill was allowed to die in the House.

Undaunted by this lack of prior success, Senator Kennedy, on behalf of himself and several other Senators, reintroduced a proposed recodification of the federal criminal laws[248] in the Criminal Code Reform Act of 1979, S. 1722.[249] As introduced, the extortion provisions of this bill were identical to those as contained in S. 1437 as passed by the Senate.

Hearings were again held on this bill, and to at least some of the representatives of management the extortion provisions of the bill were apparently satisfactory. The published comments of the Associated Builders and Contractors, Inc. noted, for example, that the omission of the word "wrongful" in the Act properly eliminated the "legitimate objectives" exception read into the Hobbs Act by the Court in *Enmons*.[250] Furthermore, the comment stated that, properly construed, the "proof" provision was acceptable as well. In their view, if the violence was something more than a minor and unrelated incident, and the employer could testify "that there was a direct connection between the violence and his decision to increase benefits,"[251] then the requirements of the section would be satisfied and a prima facie case of violation made out.

For the most part representatives of organized labor agreed with this interpretation of the proposed statute, and, for that reason, were vehemently opposed to it. They objected to the overruling of the *Enmons* decision by elimination of the term "wrongful" in the definition of extortion on many of the same policy grounds that were advanced by the Court in that case. Witnesses cited numerous reasons why *Enmons* should not be overruled: The danger of making minor picket line misconduct a federal criminal felony; the danger of overactive and politically ambitious prosecutors using this as an excuse to intrude unnecessarily into strike situations; the resulting unwarranted incursion of federal jurisdiction into an area traditionally left to the states; the disruption of the balance already struck by Congress in the labor-management relations area; the chilling effect upon the exercise by employees of other federally protected rights; and the existence of other remedies for labor violence.[252]

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[245] *Id.* at S17.

[246] *Id.* at S18.

[247] *Id.* at S860.

[248] 125 CONG. REC. S12204 (daily ed. Sept. 7, 1979).

[249] S. 1722, 96th Cong., 1st Sess. (1979), *Reform of the Federal Criminal Laws: Hearings on S. 1722, S. 1723 Before the Senate Committee on the Judiciary, Part XIV*, 96th Cong., 1st Sess. 11090-484 (1979) [hereinafter cited as *Hearings, Part XIV*].

[250] *Hearings, Part XIV*, *supra* note 249, at 10707.

[251] *Id.*

Moreover, the "proof" provision was regarded by labor as inadequate to guard against the evils that would result from making labor activity generally subject to the statute. Thomas X. Dunn, General Counsel for the Building and Construction Trades Department, AFL-CIO, stated:

> It is clear that section 1722(b) is designed to create an additional burden of proof in prosecutions for misconduct which occurs in the course of a labor-management dispute. The Government would be required to establish a nexus between the alleged misconduct and the obtaining of otherwise legitimate employment benefits. As a practical matter, however, this burden of proof could be satisfied easily in almost every economic strike where misconduct occurs. It appears that all that the Government need do to satisfy its burden is present the employer involved in the strike who will testify that the alleged violence or threat of violence was a factor in his decision to agree to workers' demands for higher wages or other employment benefit.
>
> Thus, section 1722(b) would not be an effective means of discouraging the Government from applying the proposed extortion statute to any misconduct which occurs in the course of an economic strike.[253]

Robert M. Baptiste, Counsel for the International Brotherhood of Teamsters, expressed a similar sentiment:

> While the amendment was proposed in "recognition that tempers often flare in labor disputes" and all strike-related misconduct should not be a Federal criminal offense, we submit that the proof provisions can so easily be satisfied that virtually all economic strikes where misconduct occurs could be subject to this new Federal extortion penalty.[254]

Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, was fearful of the undesireable consequences that could result if the interpretation advanced by Senator Thurmond[255] was taken as controlling. He stated:

> Furthermore, Senator Thurmond offered a detailed interpretation of the Kennedy Amendment that constitutes dangerous legislative history. Senator Kennedy made no careful explanation of his amendment. Senator Thurmond said the proof requirement would not be necessary if the defendant "was or conspired with" a union negotiator or if the damage was "repetitive," "systematic" or "purposeful rather than mindlessly vindictive."
>
> Applying this interpretation would, first of all, chill any contact between a union negotiating committee and the rank and file members. In-

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[252] *Id.* at 10045-48, 10691-92.
[253] *Id.* at 10693.
[254] *Id.* at 10049.
[255] *See* note 245 & accompanying text *supra*.

> stead of keeping a firm hand on the strike—which is essential if the committee is to be effective at the bargaining table—a committee will be forced into a "hear no evil, see no evil" position, sequestered from the membership in order to avoid possible prosecutions. Even so, a prosecutor out to nail an aggressive union leader could frighten or entice with promises of immunity a rank and file member to implicate the union official in some damage.
>
> Second, the "purposeful rather than mindlessly vindictive" interpretation effectively removes any protection the Kennedy Amendment might have provided, since any damage in a strike, misguided as it may be, is connected to the purpose of winning the strike.[256]

As drafted, the extortion provisions of S. 1722 represented a compromise which could not be held together because of the strong opposition of organized labor. This, however, opened the door anew to the full range of possibilities including reaffirming the *Enmons* approach in its entirety, on the one hand, or providing no special exemptions for labor, on the other, as well as several intermediate possibilities.

Eventually, a new compromise was hammered out. It was agreed that the basic definition of the offense of extortion would remain the same, but that the "proof" provision would be replaced with a "bar to prosecution" provision; the "grading" and "jurisdiction" provisions remained unchanged. In relevant part, the extortion section, as finally approved and reported out by the Senate Judiciary Committee, reads as follows:

> § 1722. EXTORTION.
>
> (a) OFFENSE.—A person is guilty of an offense if he obtains property of another—
>
> (1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or
>
> (2) under color of official right.
>
> (b) BAR TO PROSECUTION.—It is a bar to prosecution under this section that the offense occurred in connection with a labor dispute as defined in 29 U.S.C. 152(9) to achieve legitimate collective bargaining objectives, unless there is clear proof that the conduct which constitutes the threat or placing in fear required under subsection (a)(1) consists of a felony and the conduct was engaged in for the purpose of causing death or severe bodily injury in order to secure such objectives; and the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that—
>
> (A) the facts establish the existence of the additional elements of the offense required under this subsection;
>
> (B) a federal prosecution should be commenced under this section; and
>
> (C) the State is unable or unwilling to proceed with any equivalent prosecution relating to such conduct.[257]

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[256] *Hearings, Part XIV, supra* note 249, at 10764.

[257] S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).

The Committee Report summarized the compromise in these terms: "The Committee has concluded over the objection of a substantial minority that, except in the circumstances set forth in subsection (b) of section 1722, for the purposes of this bill the *Enmons* decision should not be modified."[258] The Committee, in other words, was willing to accept the *Enmons* proposition that the "legitimacy" of a union's objective was sufficient to justify even the use of physical violence to achieve it, at least in the sense of rendering the violence not illegal under federal law. "On the other hand, the Committee believes that the thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought and has carried forward current law to that effect in situations not involving a labor dispute."[259]

That is what the proposed statute says, but what it means is another matter. For example, S. 1722 does nothing to clarify the two main ambiguities of the existing case law. By carrying forward the *Enmons* rationale of "legitimate" union objectives, the proposed statute also carries forward the ambiguities associated with that rationale.[260] Furthermore, the Committee Report on the bill does nothing to clarify the ambiguity. At one point the report notes that the Committee intended to reaffirm the *Enmons* principle "to the effect that labor officials were not covered for their extortionate activities against employers in the course of a labor dispute, if the objective sought was *a permissible goal of collective bargaining*."[261] Similarly, in discussing the meaning of the phrase "legitimate collective bargaining objectives," the Committee Report notes that this "encompasses activities to secure *non-corrupt* labor union objectives even if, as in *Enmons*, those activities would violate other laws and excludes such objectives as efforts to obtain personal payoffs or payments for superfluous services."[262]

The difficulty, as with the *Enmons* decision itself, is in fitting the *Green* facts into such a formulation. Although the objective sought in *Green* was certainly to obtain "payments for superfluous services," in the colloquial sense, as a legal matter the objective was both "non-corrupt" and "a permissible goal of collective bargaining"; yet a violation was found to exist in that case, undoubtedly because of the presence of violence. The Committee, like the Court in *Enmons*, obviously did not intend to overrule *Green*. However, since the presence of violence is no longer a sufficient condition for a violation, the reconciliation of results of *Green* with the wording of the proposed statute is somewhat less than obvious.

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[258] S. REP. No. 553, 96th Cong., 2d Sess. 645 (1980).

[259] *Id.*

[260] *See* § III-C of text *supra*.

[261] S. REP. No. 533, 96th Cong., 2d Sess. 649 (1980) (emphasis added).

[262] *Id.* at 651 (emphasis added).

With respect to the second major ambiguity, the Committee Report does make it clear that the damage to property referred to in the definition of extortion includes only *physical* damage to property and does not include mere economic loss or injury. Those kinds of Hobbs Act injuries were, the Committee Report notes, intended to be covered by the proposed section on blackmail rather than the extortion section.[263] Section 1723 provides that "a person is guilty of an offense [of blackmail] if he obtains property of another by threatening or placing another person in fear that any person will . . . (4) improperly subject any person to economic loss or injury to his business or profession . . . ."[264] The Committee Report comments that

> [t]his carries forward . . . the present reach of the Hobbs Act, . . . as interpreted by judicial decisions. It is designed to make clear that this section does not reach legitimate activity, such as strikes, boycotts, or picketing activity undertaken in support of such objectives as increased wages or improved working conditions for employees.[265]

The significance of this language should be readily apparent. The word "improperly," as used in the proposed section on blackmail, is obviously intended to have the same connotation as the word "wrongful" contained in the Hobbs Act and construed by the Supreme Court. This means that the objective must be an "illegitimate" one. So construed, the blackmail section ties in nicely with the extortion section. If the objective being sought is other than a "legitimate" one, the extortion section is relevant if the "means" involve threats of physical damage to person or property, but if the "means" involve mere threats of economic injury, the blackmail section is relevant.

With respect to the latter, an unduly broad definition of "illegitimate" (*i.e.*, broad enough to encompass the objective sought by the union in *Green*) would create some difficult problems. It is *highly* unlikely that the Committee intended to include within the offense of blackmail a union's peaceful picketing to cause an employer to add jobs which he considers unnecessary or superfluous. However, the ambiguities inherent in the central concept of the two sections—namely, the fuzzy notion of "legitimate" versus "illegitimate" ends—makes the statute, in theory at least, susceptible to that construction.

To summarize: If, under the extortion section, the union's objective is other than a "legitimate" one, whatever that means, it is not covered by the bar under subsection (b) and a prosecution can commence under the main provisions of the section.[266] On the other hand, even if the union is attempting to achieve "legitimate collective bargaining objectives,"[267] the use of force to that end can still be considered extortion if the requirements spelled out in the "unless" clause of subsection (b) are all met. With respect to these, the Committee Report, which presumably represents an authoritative interpretation of the language, deserves to be quoted in full, because it adds things which are certainly not apparent on the face of the language itself:

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[263] *Id.* at 648 n.58.

[264] S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).

[265] S. Rep. No. 553, 96th Cong., 2d Sess. 657 (1980) (footnote omitted).

> The exception to the bar stated in subsection (b) is intended to spell out the exclusive circumstances which may give rise to a Federal extortion prosecution involving unlawful conduct that occurs during a labor dispute to achieve legitimate collective bargaining objectives. In essence this exception adds two elements to the crime. First, the government must prove that the defendant engaged in conduct against the person which, if there were Federal jurisdiction, would be a felony under the code. This element requires an act and not a mere statement or threat to act. Second, the government must prove that the defendant acted not merely "knowingly" as that term is used in the code but with the preestablished intent to (a) cause death or severe bodily injury, and (b) by so doing to force acceptance of the union's demands. "Severe bodily injury" means protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working.
>
> The phrase "clear proof," which has its origin in Section 6 of the Norris-LaGuardia Act (29 U.S.C. Section 106), as used here imposes on the government the obligation to establish by direct evidence that the conduct against the person included in the exception was undertaken for the purpose specified therein. Without such proof, violence, no matter how serious, during a labor dispute is outside the Federal extortion law.
>
> In order to reinforce traditional principles of federalism the bar is not overcome (and the Federal government may not initiate an investigation or prosecution of the illegal conduct) unless the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that (a) the facts establish the existence of the additional elements of the offense required by the exception to the bar; (b) a Federal prosecution should be commenced under this section; and (c) for reasons other than insufficient evidence the State refuses to proceed with a prosecution relating to the conduct against the person specified in the exception to the bar. Such a certification must be based on evidence obtained by or available to the State prior to the Federal government's involvement in the matter; however, once the certification is made, this provision does not limit the Federal government's ability to secure and rely on additional evidence.[268]

Construed in this fashion, it would appear that section 1722 would result in federal prosecution of violence in connection with collective bargaining only in the rarest of situations. The "clear proof" standard has, for example, been a difficult one to meet in

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[266] *See* text accompanying note 257 *supra*.

[267] S. 1722, 96th Cong., 2d Sess. (1980).

[268] S. Rep. No. 553, 96th Cong., 2d Sess. 651-52 (1980).

Norris-LaGuardia cases, and one could expect it to be a popular and successful ground of defense under the proposed extortion section as well. Similarly, the limits on federal *initiation* of investigations and prosecutions under the extortion section, as suggested by the Committee Report, would severely hamstring the enforcement of the statute. The exclusion of threats to cause property damage and the definition of "severe bodily injury" in terms of "protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working"[269] further limits the circumstances under which the section could be applied to labor violence. Moreover, insufficiency of the evidence as a basis for non-prosecution by the state is not, according to the Committee Report, sufficient to permit federal involvement, an ironic limitation since the state's lack of sufficient evidence may well be attributable to its inability to effectively investigate a crime having interstate dimensions. Finally, the requirement of what amounts to an *affirmative* recommendation from someone at the *highest* levels of the Justice Department that a prosecution be commenced seems to create almost a presumption against prosecution, immediately makes the decision a politically sensitive one, and also suggests that the discretion involved there is somewhat broader than that which would exist otherwise. Nevertheless, the Criminal Code Reform Act of 1979, S. 1722, containing the extortion provision thus described, was reported out favorably by the Senate Judiciary Committee, and is currently pending before the full Senate.

Although most of the attention was initially focused on the Senate committee hearings, the House of Representatives was at this time also quietly proceeding on the matter of revising and recodifying the federal criminal laws. The Brown Commission draft itself was, for example, introduced in the House as H.R. 300,[270] but no hearings were ever held on it. As the reforms began to solidify in S. 1 and S. 1400, "liberal" representatives, alarmed at the direction the legislation was taking, introduced their own proposed code of federal criminal laws, H.R. 10850[271] in 1975 and H.R. 12504[272] in 1976. One commentator has called these "belated and hastily drafted alternatives"[273] to S. 1, and they do not really warrant any detailed analysis.

The first proposal to receive serious consideration by the House was H.R. 6869.[274] This was the so-called "companion bill" to S. 1437 which omitted the term "wrongful" (thus overruling *Enmons*) and provided an affirmative defense if the threatened injury was "minor and incidental to peaceful picketing."[275] Organized labor was not, however, happy with the wording of this defense. Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, stated that:

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[269] *Id.* at 651.

[270] H.R. 300, 92d Cong., 2d Sess. (1972).

[271] H.R. 10850, 94th Cong., 1st Sess. (1975).

[272] H.R. 12504, 94th Cong., 2d Sess. (1976).

[273] Schwartz, *Reform of the Federal Criminal Laws: Issues, Tactics, and Prospects*, 41 Law & Contemp. Prob. 12 (1977).

[274] H.R. 6869, 95th Cong., 2d Sess. (1978).

> H.R. 6869 provides a defense, not a bar to prosecution, that the threatened or feared injury or damage was "minor" and "incidental" to a "bona fide labor dispute." Each of these terms is dangerously unclear. How much damage is minor? What is incidental? Who determines whether there is a bona fide labor dispute? Suppose, for example, what an employer labels a "wildcat" strike is later found by the NLRB to be protected Unfair Labor Practice strike? Where would this leave a prosecution based on the "bona fide" requirement?[276]

The bill was never reported out of committee. That year, however, the Subcommittee on Criminal Justice did report H.R. 13959[277] to the House Committee on the Judiciary. This bill was designed merely to reorganize the federal criminal laws, but not, at that point in time, to change their substance. Thus, it carried forward the law as construed by the Court in *Enmons*.

The next proposed revision to the federal criminal laws appeared in the form of H.R. 6233.[278] As introduced, section 2522 of this bill provided, with respect to the extortion offense that:

> (a) Whoever knowingly threatens or places another person in fear that—
>
> (1) any person will be subjected to bodily injury or kidnapping; or
>
> (2) that any property will be damaged; and thereby obtains property of another, or attempts to do so, commits a class C felony.
>
> (b) It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity.[279]

Subsection (b) obviously makes express what the omission of the term "wrongfully" in subsection (a) leaves only implicit—namely, that the *Enmons* approach was to be repudiated in its entirety.

However, when H.R. 6233 was later reintroduced as H.R. 6915,[280] the extortion provision had been changed by the insertion of the term "wrongfully" before the term "obtains" in subsection (a), thus making subsection (a) directly contradictory to the language in subsection (b). Apparently, the legal and logical effect of that was to reaffirm the "legitimate objectives" defense of *Enmons*.[281]

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[275] *Id.*

[276] *Hearings, Part XIV, supra* note 249, at 10763.

[277] H.R. 13959, 95th Cong., 2d Sess. (1978).

[278] H.R. 6233, 96th Cong., 1st Sess. (1979). A "working draft" of this bill was also introduced in the Senate as S. 1723, 96th Cong., 1st Sess. (1979), but with subsection (b) omitted.

[279] *Id.*

[280] H.R. 6915, 96th Cong., 2d Sess. (1980).

[281] One logical, but somewhat unlikely explanation, of this draft was that it made

The resolution to that conundrum ultimately adopted by the House Judiciary Committee was simply to delete subparagraph (b), thus apparently leaving the law exactly as it is under *Enmons*.

In this form, H.R. 6915 has been reported out of committee and is currently pending before the House of Representatives. Whether this bill, the Senate version, some compromise worked out by a Senate-House Conference Committee, or no bill at all is to be passed is, of course, purely a matter of conjecture.

V. CONCLUSION

The response of the federal extortion laws to the problem of labor union violence does not reflect favorably on the state of American jurisprudence in three broad respects. First, as a matter of judicial process, serious questions can be raised about the way the courts have handled the extortion statutes. The *Local 807* case was poorly reasoned, and both the majority opinion and the dissent leave the scope of the statute somewhat obscure. The "legitimate objectives" rationale of the *Enmons* decision is not only inconsistent with the prior *Green* decision, thus creating a yet unresolved ambiguity in the statute, but also ignores the overwhelming evidence of a contrary legislative intent. The reasoning in the opinion is weak in other respects as well, and one must share Mr. Justice Douglas's suspicion that the Court's own predelictions about labor policy played a more instrumental role in the decision than the traditional tenets of statutory construction, thus creating, as he also recognized, serious separation-of-powers problems.[282] Specifically, it would appear that the Court used the *judicial process* to achieve a *political result* that probably could not have been achieved by the *legislative process* and which, as indicated by the current status of pending legislation, probably cannot now be reversed by the *legislative process*.[283]

In addition, as a matter of legislative process, the manner in which Congress has responded to the problem leaves much to be

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"legitimate objectives" a defense in all cases *except* those involving labor extortion, thus turning on its head the uniquely favored treatment afforded labor unions by the *Enmons* decision.

[282] Mr. Justice Douglas noted that "[w]hile we said in . . . [case citation omitted] that it is 'retrospective expansion of meaning which properly deserves the stigma of judicial legislation,' the same is true of retrospective contraction of meaning." 410 U.S. at 419 (Douglas, J., dissenting).

[283] The *Enmons* decision is, of course, only one example of this rather curious phenomenon. For an insightful analysis of the underlying constitutional (separation of powers) problems posed by this particular use, or abuse, of the judicial process, see Walker, *The Exorbitant Cost of Redistributing Injustice: A Critical View of* United Steelworkers of America v. Weber *and the Misguided Policy of Numerical Employment*, 21 B.C. L. Rev. 1 (1980).

desired. Although a relatively clear legislative intent can, on some critical points at least, be distilled from the Hobbs Act debates, they do make for agonizing reading for they are often rambling, obscure, filled with many irrelevancies, and in general reflect the lack of a clear understanding of finer nuances of the matter under discussion. Furthermore, the statutory draftsmanship is frequently flawed. The use of the word "wrongful" in the Hobbs Act without a clear indication of what was intended and the ambiguous words and phrases of much of the pending legislation serve only as an invitation to judicial license.

Finally, at a substantive level, the *Enmons* creation of a doctrinal exception applicable *only* to the agents of organized labor, and the currently pending legislation, which, in whole or in part, perpetuates that policy of favored treatment, raise serious and far reaching questions about the quality and the equality of federal criminal justice in this country. Congressman Hobbs said of the Hobbs Act that "[t]his bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card."[284] The view today, however, is that this is not necessarily so. Instead, the prevailing view seems to be that criminality under federal law is as much a matter of the actor's *status* as it is of his *conduct*, and that the status of a labor union official is an especially privileged one in our society.

Admittedly, state law remedies may still be available for labor violence falling within the *Enmons* exception. Furthermore, even an intelligently drafted and impartially construed federal extortion statute may not be the cure-all for labor violence, since much of it does not have extortionate objectives, proof problems will always be somewhat more difficult with respect to this particular form of violent crime, and limited federal resouces may sometimes call for selective enforcement, thus still leaving the bulk of the responsibility for combating this evil to other sources of law. However, given the *almost* universal agreement that labor violence, even when aimed at otherwise legitimate ends, is to be deplored, there are no sound reasons why such violence should not be covered by a federal extortion statute of general application. The deterrent effect alone would be of immense value in promoting a central policy of federal labor law—namely, the encouragement of collective bargaining, reasoned persuasion, and the *peaceful* use of economic power. To that end the *Enmons* decision should be overruled, either by the Court itself after a more reflective review of the legislative history, or by Congress.

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[284] 89 CONG. REC. 3217 (1943).

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